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ROYAL COMMISSION ON TRANSPORTATION

Index Page #54
Page

ARTHUR J. KELLY - Recalled. Cross examined by	
Mr. Frawley - - - - -	7002
Cross examined by Mr. Campbell - - - - -	7045
Cross examined by Mr. Hume - - - - -	7047
Mr. O'Donnell - - - - -	7087
Cross examination by Mr. Sinclair - - -	7087
Questions by Dr. Innis - - - - -	7092
Noon adjournment - - - - -	7098
ARTHUR J. KELLY - Recalled. Cross examination	
by Mr. Sinclair continued - - - - -	7102
Statement by Mr. J.O.C. Campbell re P.E.I. brief	7125
EXHIBIT No.102: Filed by Mr. Letter from	
Campbell. Canadian National	
Railways re	
P.E.I. ferry	7127
MR. C.M.P. FISHER - Called. Examined by Mr.	
F.D. Smith, K.C. - - - - -	7127
Cross examination by Mr. Evans - - - - -	7145
Cross examined by Mr. O'Donnell - - -	7156
Cross examination by Mr. Frawley - - -	7168
Adjournment - - - - -	7173

- - - - -

ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
Thursday, November 3, 1949

HON. W. F. A. TURGEON, K.C. LL.D.	Chairman
HAROLD ADAMS INNIS	Commissioner
HENRY FORBES' ANGUS	Commissioner

- - - - -

G. R. Hunter	P. L. Belcourt,
Secretary	Asst. Secretary

- - - - -

COUNSEL APPEARING

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G. C. Desmarais, K.C.		
Hugh E. O'Donnell, K.C.)	Canadian National Railways
H. C. Friel, K.C.		
F.C.S. Evans, K.C.	}	Canadian Pacific Railway
I. D. Sinclair		
J. J. Frawley, K.C.)	Province of Alberta
C. W. Brazier)	Province of British Columbia
F. D. Smith, K.C.)	Province of Nova Scotia
		Transportation Commission of the Maritime Board of Trade
J. Paul Barry)	Province of New Brunswick
J. O. C. Campbell, K.C.)	Province of Prince Edward Island
F. R. Hume	}	Canadian Automotive Transportation Association
M. L. Rapoport		

- - -



Thursday, Nov. 3rd 1949.

MORNING SESSION

The Commission met at 10.30 a.m.

MR. CHAIRMAN: Very well Mr. Covert

MR. COVERT: Mr. Chairman you will recall that yesterday when I was questioning Mr. Kelly, Mr. Sinclair asked me where I had obtained the information that ⁱⁿ some of the provinces for some years the motor vehicles had paid their way. That appears on page 6979-6980 of the record and I promised I would give the source. The source as a matter of fact, is not in the record as yet but it is in the brief filed by The Railway Association of Canada and I would like to read one paragraph into the record:

"In 1942 every province in Canada, except Quebec and British Columbia, demonstrated that annual construction, maintenance, and administration expenditures could be more than met by revenues from direct users.

In 1946 seven of them were no longer in this position."

I might add that in the exhibit which is filed as part of the brief of the Railway Association of Canada, it indicates that in 1942, 1943 and 1944 the revenues from the motor cars exceed the expenditures for maintenance, construction and administration.

THE CHAIRMAN: Of the highways?

MR. COVERT: That is correct. I just want to complete the record and carry out my undertaking.

We left off yesterday where Mr. Kelly was giving evidence. Will you take the stand Mr. Kelly.

ARTHUR J. KELLY RECALLED

MR. COVERT: I had finished questioning Mr. Kelly and I think if provincial counsel wishes to follow he

Q. There may be a question as to whether or not the Dominion may have the right to legislate with regard to the operation of a truck between Calgary and Regina?

A. That is right.

Q. And that then is a constitutional question which you say, you say fairly, may be involved.

A. And until those questions are decided by some appropriate authority and until there are some cooperative arrangements between those now having jurisdiction we say we cannot ever get a national transportation policy.

Q. Now, if you do not mind, we will confine ourselves for the moment to the regulation of trucks intr-provincially. You do not suggest that there is any constitutional question to be solved?

A. We believe ^{and} we have reference to support it that under the present legislative conference the provincial legislatures have the complete right of jurisdiction within the boundaries of the province.

Q. You believe that to be a statement of the law?

A. Yes.

Q. Would you mind turning to the second of your recommendations.

"(2) That early consideration be given to the desirability of constituting a board, committee or commission to carry on a continuous study of the ever-changing transportation problem with the primary object of conserving and protecting the human element involved; also to consider appropriate measures to safeguard, as far as may be practicable, the interests of all concerned."

Did you have in mind the health and welfare of the employees?

A. Not only of the employees but of all the people who must of necessity be directly involved in the use of the highways which are used by this highway transportation.

THE CHAIRMAN: What page is that?

MR. FRAWLEY: Page 3 of the printed form.

MR. COVERT: Pages 7 and 8 in the mimeographed copy.

MR. FRAWLEY: Q. You were saying the welfare of everybody concerned, directly or indirectly concerned with the use of highways by trucks. Is that what you have in mind?

A. And by the service for transport for hire on the highway and the community service that has been built up from time to time.

Q. And now that is being attended to at the moment -- well or badly -- by the province, is not that so?

A. In so far as provincial jurisdiction is concerned.

Q. That is true. To simplify this discussion (I want to limit my discussion to the Province of Alberta) intra-provincially from the Montana line to Dawson Creek, British Columbia; from ^{the} National parks to the Saskatchewan boundary on the East. care of now by the provincial legislature and the provincial executive. That is so, is it not?

A. It is taken care of. It is within the authority of the province to a degree and the degree to which it has been met is another question.

Q. It has been taken care of -- well or badly -- that is so. But it is taken care of by the province. You would not suggest that there should be a Dominion

body to superimpose itself upon the provincial body for the purpose of conserving the human element involved in the operation of provincial traffic on the highway?

A. I would to this extent. We found it necessary -- Parliament has found it necessary to enforce upon the railway an authority governing the safety appliances, safety practice and equipment and if they find that the provinces are not doing that it would lend itself to some overall jurisdiction or planning committee or board to see that that was done.

Q. If there be a railway which begins in Calgary and ends in Edmonton, the Board of Transport Commissioners would have nothing to do with the safety appliances of that railway?

A. I understand they would, if the railway were declared to be a work for the general welfare of Canada.

Q. Yes, if it was declared to be. Because the Dominion imposes certain safety regulations upon the railway which run from one end of Canada to the other, you feel it should not be left to a provincial body to prescribe the safety regulations to be applied in the regulation of trucks travelling wholly within the province on the provincial highway?

A. I think it is the travel and the continuity of travel by the citizens of this country that safety should not be left to the jurisdiction of those within one portion of Canada that are not prepared to set up regulations that can be and should be generally accepted as proper for the safeguarding of those people.

Q. Let me put it another way. - your organization is a national organization?

A. Correct.

Q. You have local Associations and Executives in various areas?

A. Correct.

Q. Do you know of any situation (I am still speaking of Alberta) where there is lack or dereliction of duty on the part of the people who are charged with safety on the highways in Alberta?

A. I would not care to admit, or to point my finger at any particular province; but we have numerous instances of faulty equipment; equipment not maintained in keeping with the standards that could be expected to be required by any general supervisory body, and the laxity is perhaps in the regulations of the province.

(Page 7016 follows)

Q. That is the kind of thing I was putting to you. Are you able to place before the Commission anything of that sort in the Province of Alberta where faulty equipment has been allowed to operate on the highway to the danger of the human element involved?

A. I am not able to place any such thing before the Commission, but my inability to do so does not at all indicate that I believe there may not be some cases that could be prepared and presented.

Q. I was just wondering if you had anything to place before the Commission for their information. Now then, Mr. Kelly, would you turn to the fifth of your regulations and that is the taxing of the trucks. Now is it the view of your Association that the trucks are not taxed sufficiently onerously in the Province of Alberta?

A. I appreciate, sir, that you are speaking of the Province of Alberta and I am not prepared to say whether they are or are not taxed sufficiently.

Q. Now then, would you turn to item 6 in which you suggest that owners be required to furnish guarantees of sufficient financial responsibility to ensure the payment of any claim for damages. Now are you aware of the law that is in force now in the Province of Alberta with respect to the financial ability of truck operators?

A. No.

Q. And you are not prepared, therefore, to say that it is not adequate?

A. Maybe.

THE CHAIRMAN: Q. What is the gist of the law there?

MR. FRAWLEY: It is contained in section 18,

my lord, of the Public Service Vehicles Act, which is in the brief which I will present to the Commission later and Section 18 says, --

"(2) No certificate for a public service vehicle shall be issued unless the applicant has filed with the Board such of the following insurance policies as may be required by the Board, --"

Now, my lord, there are quite a few of them.

"(a) a motor vehicle liability policy to provide for any loss or damage resulting from bodily injury to or the death of any person being carried in or upon, or entering or getting onto, or alighting from a motor vehicle, having due regard to the number of passengers, and for loss or damage to personal property or passengers carried in or upon the motor vehicle;

(b) a motor vehicle liability policy to provide for any loss or damage resulting from bodily injury to or the death of any person other than those mentioned in the immediately preceding paragraph;

(c) a policy of inland transportation insurance against loss of or damage to goods, wares or merchandise or property of any kind in transit or in the custody of the transporter;

(d) a motor vehicle liability policy to provide for any loss or damage to any property other than that mentioned in paragraphs (a) and (c);

(e) a policy of guarantee insurance covering the payment to the consignor of all sums collected by the transporter on behalf of the consignor, and the payment of all fees or charges under this Act, and for the faithful performance of all conditions contained or referred to in the certificate issued

under this Act."

Now, Mr. Kelly, would you turn to No. 8 of your recommendations in which you speak of or have a recommendation that "in the interests of safety, operators of all motor vehicles be required to pass a qualifying physical examination, particularly regarding visual acuity --" and so on. Now do you know whether or not the Province of Alberta is lax or derelict in its duty in the matter of the regulation referred to in that paragraph?

A. We made no attempt to analyze the regulations of each province.

Q. Now, would you turn to No. 9 in which you have a recommendation that "commercial motor vehicles be restricted to a reasonable maximum tonnage". Are you aware that there are provisions now in the Province of Alberta, regulations respecting maximum weight and limit of vehicles on the highway?

A. I assume that there are in all provinces.

Q. And you would assume that in so far again as Alberta is concerned (because I am concerned only with Alberta) that those are adequate to carry out the responsibility of the province?

A. I am not prepared to answer because I am not familiar with your Alberta situation.

Q. And you will be generous enough, Mr. Kelly, to be prepared to assume that without that information you are not prepared to say it is not?

A. That is correct.

Q. Then, if you look at No. 10 in which you have a recommendation that a "uniform legislation be enacted to ensure reasonable standards in regard to working conditions, including wages and hours of labour --".

now you are not prepared to question the adequacy of the numbers of inspectors and the amount of inspection that is carried on by the Provincial Board with respect to the hours of work and the standard of wages of people employed in the transport of freight by highway in Alberta?

A. Not confining it to any one territory.

Q. Now then, would you look at No. 7, Mr. Kelly, in which you say that "no bus or truck be permitted to operate on the highway for revenue purposes where adequate transportation facilities already exist or where the steam railways can and are willing to provide these facilities", and you made that clear yesterday to Mr. Covert that you felt that there should be no traffic by truck on highways which paralleled adequate rail service?

A. That is right.

Q. That is your position?

A. Yes.

Q. Now, Mr. Kelly, do you realize that applying that proposition to the Province of Alberta, that the trucks would go off the highway from the Montana line to the Alaska Highway at Dawson Creek, B.C., Highway No. 1. Do you realize that that is what the implementation of that recommendation would mean?

A. It is quite correct, possibly. We are prepared to still sustain that petition.

Q. You are prepared to recommend to this Commission that the trucks be completely removed from the highways running from the Montana line to Dawson Creek, B.C., because the highway parallels what I am prepared to say is adequate rail service between those two points? Are you also aware that you would take the trucks off the

highway from Banff, Alberta, to Medicine Hat eastbound and from Crow's Nest to Medicine Hat westbound?

A. If the railways can provide adequate service, we still contend that there is no good reason for a highway carrier in direct competition with the railway where the railway can and will give adequate service between these points.

Q. Mr. Kelly, I simply want to get on the record precisely what you mean and I must say you are very frank about it. So the record can say that your Association would take the trucks off the highways from Banff on the west to Medicine Hat and from Crow's Nest Pass on the west to Medicine Hat and go by the Canadian National territory from somewhere in the coal territory and Edmonton to Lloydminster in the east?

A. If the railways can provide adequate service between those points we cannot see that there is any place for direct highway competition in connection with the railway.

Q. As far as I know -- I have no railway timetable and in fact the timetable would not tell me the freight schedules anyway -- but as far as I know there is reasonably good service on all these lines I have mentioned to you and in view of the fact that those trains are running fairly regularly then, so far as your Association is concerned, those trucks must come off. Then do you realize also that between Red Deer and the Saskatchewan boundary at Alsask trucks must come off because there is, I assume, reasonably good freight service there from Red Deer to Kerrobert which is in Saskatchewan, of course passing the Alberta line at Alsask or Monitor so those trucks would come off if that rail service is, as you say, reasonably adequate?

A. We still stand by our recommendation No. 7.

Q. And the trucks would come off from Edmonton through the Saint Paul-Denville country to the Saskatchewan line near Cold Lake, the trucks would come off if your Association's recommendations were implemented in every way (they might or could be implemented as a result of these deliberations of this Commission), these trucks would come off?

A. The only answer I can give you, sir, is that our position is where the steam railways give a still proper and adequate service between two distant points, there is no place for highway competition in direct parallel with the railways between such points.

Q. For the record I only have one more line to give you and that is the line from Edmonton to the west, in the north over the old G. W. railway now jointly owned by the Canadian Pacific and Canadian National. Where there is what the railways might regard as adequate rail service the trucks would come off that highway?

A. I am not prepared to subscribe to the thought that the railways only are to determine what is adequate service. You say what the railways would regard as adequate service. I think someone else has a voice in that.

Q. Now Mr. Kelly, will you tell me and this Commission that if those trucks were taken from those highways of Alberta (and I will tell you that these are the main highways of Alberta) -- if all the trucks came off, and for the matter of that the buses too, but I am not concerned with the buses, that if the trucks came off and the people of the Province of Alberta had no truck service covering any of the points

On any of these lines I have mentioned, do you say that the economy of the Province of Alberta would be advanced?

A. I don't know if I get your question.

Q. Would it be for the good of the Province of Alberta? I don't want to be technical about it but would it be for the good of the Province of Alberta that those trucks should be removed by one Act of some Commission or Legislature?

A. I am not familiar enough with the conditions in the Province of Alberta to answer that question. I do say this, that we contend that where the railways can and are willing to provide these services and we have the Board of Transport Commissioners as a control to indicate the necessity of a rail service, we think that the railways are a national necessity and deserve that protection.

Q. You live where, please?

A. In Ottawa.

Q. You have no one certainly here who lives in the Province of Alberta and who would be able to discuss with me the consequences upon the economy of Alberta of the proposals you have made?

A. We have not.

Q. And you do not suggest you have very specific knowledge of the amount of traffic which goes over the roads on the highways I have mentioned to you?

A. No.

Q. You have no means of saying what the people of Alberta would say if the truck service was completely removed as you suggest?

A. You will find in our brief, sir, that we say that this cannot be done immediately, that it would have to be done after planning and consideration in judicious

graduation, so I would hardly think it is fair to think of these things happenening over night. Adjustments would be made which would take care of the services as well as the change.

Q. You are advocating that before this situation can be brought about there would have to be the kind of thing Mr. Covert disussed with you yesterday, a Planning Board set up, who would weigh the effect it had upon the village of St. Pauls Deville if it could not get anything any longer by truck from Edmonton and would have to rely on the railway, that such a Board would have to go to these things?

A. To protect public convenience and necessity.

Q. Now this "public convenience and necessity", that is a certificate that they have in some provinces which says that before you can run on a highway you must get a certificate from the Board and then, some one having got a certificate, then no one else gets one. That is the way that sort of thing works isn't it?

A. I think generally so for the reason that the Licensing Authority must determine at once to whom they have granted the licences sufficient to servbe both necessity and convenience and they must protect it.

Q. So, if my friend Mr. Covert and Mr. Desmarais formed a company to operate a truck-line between Edmonton and St. Pauls Deville and Mr. Smith and I formed a company to operate there and we went to the Board and asked for a licence, the Board unless my friends Mr. Covert and Mr. Desmarais were doing a poor job, they would say to us: "You just scrap your vehicles; you can't operate". Would that be about right?

A. I am assuming, sir, that before yourself and your friend undertook to enter that business in that territory that you would be sure of a licence.

A. Yes, that is right. We would have attuned ourselves to the socialization of things to that extent. Doesn't it come down to that whether it is a case of free enterprise or socializing the highways of Alberta?

A. Our only question as to the propriety of the licensing, as we have experienced it, the licensing of carriers for public necessity and convenience, is the fact that in many points we find that licensing authorities have regard only to the licences that they themselves have already issued between two points and have no true regard for the railway as a transportation system crossing the same two points and we say that the railway should be given equal consideration with other applications for a licence to operate.

Q. Then what I say is this, that there is now -- I would like to put a concrete case; I could understand it better and perhaps you too. At the moment there is rail service by Canadian National from Edmonton to St. Pauls Deville. There are many, I suppose many cases -- you see, we have no "certificates of convenience and necessity" in Alberta, so I suppose there are many trucks running from Edmonton to St. Pauls Deville. So your proposition is that if I wanted to go into that trucking service tomorrow some Board would refuse me a permit because there is already rail service and truck service?

A. I think that is a sound principle, sir, because any Licensing Authority that has the jurisdiction to say who shall enter what particular transportation service, must have some obligation to protect that enough so that firms in business need not be worried. They should not simply sell licenses for the purposes of the licensing fee without regard to whether or not this fellow is going to be able to operate on a sound economic basis.

Q. Now you say you are concerned with the welfare of the community and the welfare of the persons engaged in transportation?

A. That is right.

Q. Now then, has your Alberta Association reported to you any instances of detriment to the community or detriment to the highway operator from the fact that there is no "convenience and necessity" legislation in the Province of Alberta?

A. We have no specific report from any point in the Province of Alberta? We are dealing with general principles.

Q. And you do not wish to leave with this Commission (because I am still concerned with the Province of Alberta) you do not wish to leave with this Commission the slightest thought that there is not a perfectly satisfactory situation in connection with the transport of goods by highway in the Province of Alberta?

A. I am not going to assume sir that our lack of knowledge of the Province of Alberta implies that everything is one hundred per cent in the Province of Alberta.

Q. I am just asking if you have anything to place before the Commission which would indicate any need in Alberta to change the present situation and when I say "any need" I mean any need on behalf of the community, any need on behalf of the persons engaged in highway transport by truck, and do you know of any need that exists in Alberta today which requires a change in the situation?

A. We have no such information.

Q. There are one or two more of your recommendations which I want to discuss with you and we come to 4. There

are only two left - 4 and 3. You say in No. 4 that you would recommend that immediate measures be taken for the elimination of destructive competition because of duplicating highway services. I have to ask you two more questions, Mr. Kelly. You do not know, do you, of any evidence of there being destructive competition caused by duplicating highway services in the Province of Alberta?

A. I have no specific knowledge of Albert's condition.

Q. Now, there is No. 3 which is a recommendation that there be rate regulation of trucks. Now Mr. Kelly, you know that when there is truck competition the railways very often, in fact mostly all the time, will put in a truck-competitive rate to meet that truck competition you are speaking of.

A. You are speaking of 3?

Q. I am speaking of 3. I think that is the one that recommends rate regulation. The last two lines say ". . . especially with regard to the fixing of rates, tariff charges . . . "

and as far as I am concerned you can stop right there. You know that when there is effective truck competition the railways generally meet that and put in a truck-competitive rate on the railways?

A. I would prefer to have the railway explain that.

Q. Well, I thought that as a matter of common knowledge, Mr. Kelly, you knew that the railways met truck competition by putting in a rail rate which was competitive.

A. To exactly what extent they are permitted to do so I am not able to say.

Q. Well, that is a matter of rate regulation under the Railway Act and you would prefer not to discuss

it. If you assume with me that the railways do put in rates to meet truck competition and that those rates are there to stay as long as the truck competition on the highway is effective, if there is a specially low truck-competitive rate put in to meet that, you would not suggest that it is desirable that those truck-competitive rates be taken out immediately?

A. I would for this reason, sir. We can say that the railways are a national necessity. We say that the taxpayers of the country pay for the railway as well as the truck. We say that the user of transportation should pay adequate rates for his privilege and that one should not force another below a rate that is equitable for the service performed.

Q. You said something just a moment ago. I think you said it yesterday and frankly I was somewhat concerned when I read this morning. At page 6970 you say:

"We should not condone or encourage or permit one section of the country to capitalize on unregulated transport for hire to the detriment of the railway and to the taxpayer of the country who makes up the deficit incurred by the railway."

You were speaking of the deficit of the Canadian National Railways?

A. That is so.

Q. Whether there are any Canadian Pacific Railway deficits or not, they are not made up by the taxpayer?

A. That is right.

Q. Now you know that what is made up by the taxpayers of the country in the case of the Canadian National Railways is the over-all deficit which emerges after the Canadian National is required to pay its fixed charges. That is true and you know that if I can say so one of the important

things which this Commission has to go into is this very question of the capital structure of the Canadian National. You may be aware that the Canadian National itself has suggested that probably something should be done to ameliorate that situation. Are you aware of that?

A. That is so.

Q. Now you say, nevertheless, that they make up the deficit of the railway and you are fair enough to agree with me that what the people of Canada are making up is this deficit left after they pay these large numbers of millions of dollars, after they pay their fixed charges. Now:

"These deficits are paid out of a fund that is used to build the roadways on which the truck operates." As far as I know the Province of Alberta pays for the highways in the Province of Alberta.

A. And the people and tax payers of Alberta provide the fund that the Government of Alberta puts into the road.

Q. But "these deficits (of the Canadian National) are paid out of a fund that is used to build the roadways on which the truck operates". You may not have been correctly reported. Perhaps that is not what you meant to say but you are reported as saying "these deficits (that is the Canadian National Railways) are paid out of a fund that is used to build the roadways on which the truck operates."

A. I cannot conceive of that language being absolutely correct, sir. My point is this, that we are all citizens of Canada and as such we meet the deficits of the Canadian National Railways through Dominion taxation. We are also citizens of our respective provinces and we are taxed and pay into a fund from which

the province puts roads into the province. Now if I get your theory correct that, because the Canadian railways have the right to reduce their tariff charges in competition with highway carriers, assuming there were no deficits on the railway and we were starting off with a clean sheet, my thought is that it would not be long, with such competition, one regulated and the other unregulated, until there would be a deficit that we would be required to meet, and I say that any transportation is worthy of its hire and that there should be a regulation of tariffs and rates proportionate that the person who benefits by transportation of any type should pay a reasonable price for the service that he receives.

Q. Perhaps we are at cross-purposes. Let us be specific again. Between Calgary and Edmonton there is truck service. Between Calgary and Edmonton there are truck competitive rates on the Canadian National Railways. If your views prevailed the trucks would come off between Calgary and Edmonton and I simply put it to you that in all likelihood the ^{rail}/rate would increase because the truck competition would have gone. I simply put it to you, is that part of the objective which you say is to benefit the people of Alberta?

A. If you had an over-all Planning Authority and an over-all central control that would be taken care of, I should think, any arrangement or readjustment made in your transportation services.

Q. Now that is interesting. How would you take care of that taking it step by step? The trucks would come off between Calgary and Edmonton because there is adequate rail service, pick-up service, and service over night just as you were talking about between Toronto and

Montreal so that your Authority -- I quite agree there is a need for these trucks running back and forth paralleling the railways -- if we accept your suggestion they would be taken away. I suggest to you that the rail rate from Calgary to Edmonton would not be as favourable as we are enjoying now. Don't you agree?

A. I do not agree for this reason. If the rate is now below what it is judged it should be and what it would be judged by an Over-all Planning Commission it should be, then it would go up. If it is proper for a Commission to weigh all the angles and the rates and they may decide that the present rates are sufficient, you would have an authority over rail rates as well as over truck rates and that authority would decide whether or not a rate was sufficient or should be raised or should be reduced.

Q. That is fine. You would leave it all to this Planning Board and you feel that the fact that the trucks came off the highway between Calgary and Edmonton would not put that rate back to where it was before the truck competition became effective.

A. Unless that rate were justified in the judgment of the Authority or the Board that had the regulative authority.

Q. I see. Now then, you said yesterday and I have only one more question -- you said in your brief -- I will call attention to where you say it in your brief. On page 1 you say in the second last full paragraph starting: "We submit it is absurd . . .", you say there in the three last lines: ". . . while competitors (that is truck competitors) pick and choose the more convenient and profitable traffic . . ." Now that expression has been used before and I just wondered,

Mr. Kelly, if you were aware of the legislation in force in the Province of Alberta which takes care of that situation?

A. I can say at the moment that I am not.

Q. Well, you will let me read you what the legislation in Alberta says about that, and I am inclined to think that you will agree with me that this is probably quite adequate. It is section 29 (2) of the Public Service Vehicles Act --

"(2) No driver or operator of a public service vehicle shall refuse to carry the commodities stated in the owner's certificate if the same are offered in proper condition unless at the time of the offer the vehicle is loaded to capacity or owing to climatic conditions the property is liable to perish in transit."

Now has your Association reported to you any instances of carriers licensed in the Province of Alberta, and I mean licensed as operators of vehicles -- not licensed as to rates -- reporting any instances where licensees from the territories of public vehicles in Alberta have refused to carry traffic in any commodity.

A. We have no specific information from Alberta. I gather from your reading of that section it indicates that it must accept any commodity named in the certificate.

Q. Yes, that is what the section says.

A. You are still leaving quite a wide field, I assume, unless the certificate names practically everything that would be offered for transport or that

the people of the community would require to have transported.

Q. I do not want to get into any detailed discussion of what the regulations are out there, but there are some trucks which only transport oil. You have heard that oil is transported in Alberta. Now those trucks do not carry or hold themselves out to carry anything but oil of gasoline. You agree with that so that you can't expect an oil truck driver to be stopped on the highway to pick up a consignment of potatoes we will say.

A. I am thinking, sir, of the general picture and as you have referred to our comments here about the highway transport accepting the more preferable and profitable traffic, we still hold that that is true because there ^{are} many many commodities that the people of this country, and wherever they may be located, often require to be transported that your truck cannot handle and you still have to have the railroad to handle it.

Q. I am talking about the truck driver who is licensed to carry general merchandise which you mention and there are some which are licensed to do that, to carry general merchandise. I just wanted to know if you had any instances where those people had picked and chose in connection with the traffic?

A. No, we have not.

THE CHAIRMAN: Anybody else?

COMMISSIONER INNIS: Q. Do I understand that you would not allow the Covert-Desmarais Truck Company to compete with the railway under your planning organization? That is to say, you would not allow the railways to operate the Covert-Desmarais Company as competitors or ---

A. Our point, sir, is that we think that the Commission are desirous of consideration of an over-all national transportation policy. Our whole point is that where the railways can and will provide adequate service in a community they should be given the right to perform that service because of their position in our national economy.

THE CHAIRMAN: Q. Without the competition of trucks?

A. Without direct competition from trucks serving parallel routes. We say that where public necessity and convenience can be and is met by the railways they should be given preference, because of the fact that in the broader field of the Canadian economy we must have railways and we must surround them with a certain amount of protection against present unregulated competition. Does that answer your question?

COMMISSIONER INNIS: Q. I think it does. The specific case of trucks owned by the Canadian Pacific Railway running between Brandon and Winnipeg -- I think we had some evidence to that effect -- I assume that your planning body would not sanction such lines?

A. We advocate, sir, that the planning body would consider all the needs, all of the facilities offered by the railway to meet that need, and if there were needs that were not met by the railway, then the planning body,

whatever form it might take, would license other forms to meet the need. as they saw 'it.

MR. FRAWLEY: Mr. Chairman, I would like permission to ask Mr. Kelly one question; I am reminded of it by Dr. Innis' question.

Q. You know, Mr. Kelly, that the Canadian Pacific Railway has bought out the largest truck operator in the Province of Alberta, do you?

A. I do not.

Q. Did you ever hear of Dench of Canada?

A. No.

THE CHAIRMAN: What is the name?

MR. FRAWLEY: D-e-n-c-h, Dench of Canada Limited.

Q. You are not aware that the Canadian Pacific now owns wholly Dench of Canada?

THE CHAIRMAN: Owns and operates?

MR. FRAWLEY: Own and operate Dench of Canada.

THE WITNESS: Not that particular firm. I have no knowledge of that particular line of traffic. I know that they have -- both railways I understand have -- certain trucking facilities.

MR. FRAWLEY: Q. Well, I don't know so much about the Canadian National but we know, of course, that the Canadian Pacific has started in or about the city of Winnipeg and, proceeding west, has bought up a continuous chain of truck companies extending right over to the Pacific coast; are you aware of that?

A. I don't know that.

Q. Well, speaking of my own province you then are not aware that the Canadian Pacific owns and operates what was the largest truck operator in Alberta -- Dench of Canada?

A. No.

Q. And what is the policy, what are the views of your Association, with regard to the operation by the Canadian Pacific of Dench of Canada side by side with its rail lines?

A. If the situation that you portray is correct, I assume that they have done it because of the fact that they are operating it in conjunction with their rail service, and at any rate in competition with those who are in highway service, that have attempted to take from the rail the service which formerly was performed by them.

Q. So that your view to this Commission would not contain any recommendation that the ownership of truck lines by rail lines should be discouraged?

A. I say it should be left to a planning commission, an over-all planning commission and regulatory body, and if the railways are operating trucks on our highways that are necessary for public necessity and convenience, they should be curtailed by this over-all planning commission in the same way as any other truck outfit.

Q. I have just one more question. You are aware that certain large shippers, notably the breweries, deliver their own goods in their own fleet of trucks?

A. Yes.

Q. You are aware of that?

A. Yes, sir.

Q. Now, that method of operation hurts the railways?

A. That is true.

Q. It is truck competition, and hurts the railways.

THE CHAIRMAN: Those are not operations for hire. I think Mr. Kelly at the beginning of the submission told us that he was only concerned with operations for hire.

MR. FRAWLEY: That is right, sir.

THE WITNESS: I think I said yesterday, Mr. Chairman and gentlemen, that we did not feel that any logical argument could be made against any industry which trucked its own product -- talking about competition of trucking for hire.

MR. FRAWLEY: Q. Then let me just follow that up a little. You are not, then, concerned, and you have no views and no recommendations to make with regard to this matter of large shippers owning and operating their own trucks and delivering their own goods throughout the towns and villages of Alberta?

A. At the moment we have a much greater problem in the trucking for hire than we have in the industrial concern that trucks its own business.

Q. Mr. Kelly, if I might, let me suggest to you that you would find yourself in the middle of probably a still greater worry if you removed the for-hire trucks; you would simply force more and more large shippers to buy and own and operate their own fleet of trucks; has that not occurred to your Association?

A. That is something that will have to be met when it arises and as circumstances dictate. We have a much more important job immediately before us.

Q. I am putting it to you that that is a very important matter, and would your planning board undertake to say to those shippers that they must not deliver their own goods by truck if they chose?

A. I could not suggest to you, sir, what a planning board that is not yet formed might do.

Q. There would not be very much free enterprise left if the planning board did that, Mr. Kelly, I would think.

THE CHAIRMAN: Are there any other questions?

CROSS-EXAMINED BY MR. CAMPBELL:

Q. Mr. Kelly, at the commencement of Part II of your brief, the first paragraph:

"These organizations are vitally concerned in the matter of freight rates and railway tariffs generally, because of its impact on the wages and working conditions of the employees. The necessity for the expression of our views in this connection arises from the fact that the allegation of inadequate tariffs frequently made by the railways has profoundly affected wages and conditions."

I would like to know just what the meaning of that last phrase is; does it mean that the wages are too low on the railway?

A. I think, sir, the most simple explanation I can give you of that language that you have mentioned is that each time any of the railway employee organizations seek to improve their wage conditions or wage rates, working conditions or wage rates, on through this indicates that they have at one time enjoyed a parity with the United States rates and conditions. Any time that they have sought to attain again that parity which existed in 1918, we met the question raised by the railways that freight rates and tariffs in this country are not equal to those in the United States, and consequently they cannot agree to a parity of wage rates. Is that the ---

Q. My question was this, Mr. Kelly: in the last phrase of that sentence you say it has profoundly affected wages; does that mean that the present wages paid to railway employees are in your opinion too low?

A. Yes.

Q. At page 97 of the Prince Edward Island brief

I notice that according to the Dominion Bureau of Statistics the average payroll earnings by employees of the principal railways in Canada for the year 1948 was \$2,729.10. That figure should be increased?

A. Does the same record from which you obtained that figure show the hours these men work?

Q. It does not show it here. I am just asking you, that figure should be increased?

A. I would say yes, but I want to qualify that to this extent, that no gross salary or no average salary or average wage earned by any group of employees can be considered as to it being equitable or otherwise without relating to that amount of money the hours or miles that he put in to earn it.

Q. I put this to you, then, Mr. Kelly; do you realize that, for instance, in my province of Prince Edward Island it is practically impossible for us in private practice to keep our good stenographers after we have them ^{trained} because they want to go to work for the C.N.R.? Would you say that stenographers on the C.N.R. work longer than stenographers in private business?

A. They may or may not.

Q. Well, what would be your opinion? You are a railway man.

A. I assume that they would be about equal.

Q. And they would be included in this?

A. They are but a very small percentage of the group of railway employees for whom wage agreements are made collectively.

Q. Would you say that all the employees in the regional offices, office workers, would work about the same hours?

A. No doubt.

Q. Do you know, Mr. Kelly, what is the percentage of direct rail wages to the total direct rail costs?

A. I cannot answer that.

Q. I suggest to you that it is 55 per cent?

A. That is a question the railways will have to supply.

Q. At all events, you say it should be raised?

A. In comparison with comparable service rendered to the railways with which our railways connect.

Q. I suggest to you, Mr. Kelly, that the average pay for cabinet ministers in my province of Prince Edward Island is less than \$2,729.10 per year.

A. That still does not convince me that the fault lies on our side. I think the correction lies with Prince Edward Island.

Q. Our ministers are possibly underpaid. Do you believe, Mr. Kelly, or have you given it any consideration, that the total wage cost of the railways of Canada would be substantially reduced if some form of consolidation of the two railways of Canada were brought about?

A. Depending upon form. We now have that in effect in pool service and in one railway operating over a line of another. Some progress has been made by means of that kind.

Q. In other words, wherever you have consolidation of services you effect a saving in total wage costs?

A. In some places that is done without inconvenience to the public; you have a Union Depot at Ottawa, for a glaring example.

CROSS-EXAMINED BY MR. HUME:

Q. Mr. Kelly, I have a few questions in connection with Part I of your submission. I think, because I am sitting where I am, that you might feel compelled to turn

and face me, so I will move up here, and I think then perhaps the Commission members will be able to hear a little better, as you will not have to turn your face.

THE CHAIRMAN: What part of this brief are you referring to, Mr. Hume?

MR. HUME: Part I, Mr. Chairman. I have the printed copy, but I think I have the page numbers on it of the mimeographed copy; if the members of the Commission have the printed copy I will refer to it.

THE CHAIRMAN: If you just give us a lead we will find it all right.

MR. HUME: Q. Mr. Kelly, in the second paragraph of Part I -- first of all if you will permit me, I would like to get some things clear. Have you any connection or are you members of an association that this Commission heard called the Ship-By-Rail Association?

A. No, we have no connection, and the question of the status of the so-called Ship-By-Rail Association was clearly explained to the Prime Minister and his Cabinet on March 24th last. The Ship-By-Rail Association as we know them are composed of a voluntary association of many different classes of employees which originally were formed on the Canadian National Railways for the purpose of soliciting traffic for the railway, and as years went by they have branched out into a field of making representations to governments, to provincial and federal governments, and to commissions such as this, making or prefacing generally their submissions with the statement that they represent all railway employees in Canada.

Q. I take it you do not agree with that?

A. Not when some eighteen standard organizations have regular channels through which to present the views

of their men, and not particularly when the executive secretary of that association has an office in Toronto Union Station, the only one on the second floor not occupied, I believe, by Canadian National official staff.

Q. Well, Mr. Kelly, this association that you have described submitted a brief and was cross-examined in Toronto on August 5, 1949, and, as I have read their brief, it was largely concerned with some of the same ideas that I see in Part I about the trucking industry, and I wondered if there had been any collaboration between you in the preparation of your submissions?

A. Some of the members of our organization who have received copies of this brief are members of the Ship-By-Rail. I would not be at all surprised if there was a repetition of some of the things found here, in the brief that they may have submitted.

Q. And they stated in evidence -- I am trying to find it, and I think I will be able to do so before I sit down -- that their objects or one of their objects, was the preservation of the jobs of the railway employees. That was asked on cross-examination, and they stated that. Does that correspond with some of the objects of your organization?

A. Yes, naturally, to some extent. We have spent our lifetime in railroad service; we do not want to see it dissipated.

Q. So will you agree with me that in preparing your submissions to this Commission, and especially Part I about the truck industry, that is one of the factors that you took into consideration, that is to say, the preservation of the employment and the pay cheques of the railway employees?

A. Correct.

Q. I am not quarrelling with that.

A. Correct.

Q. I just want to find out if that underlines ---

A. One of the factors.

Q. One of the factors, yes. Now, I would like to bring this matter with you, if I could, into a little sharper focus. Do you have any figures, or have you had occasion to get any figures from the Dominion Bureau of Statistics, as to the number of commercial motor vehicles in Canada?

A. Attempted to get '48 figures, and we were told by the Bureau that they are still in preparation. We had '47, but we did not attempt to use them in preparing this brief.

Q. I suggest to you that the '47 figures, according to the Dominion Bureau of Statistics, were that there were 425,803 commercial vehicles in Canada in the year 1947; does that figure sound right to you?

A. Yes.

Q. And that they made a preliminary estimate for 1948 of 435,000. Now, have you made any studies or have you any estimate as to the number of those vehicles that are the for-hire truckers that you have stated you are only concerned with?

THE CHAIRMAN: Pardon me, Mr. Hume; would you give us those figures again?

MR. HUME: Yes, sir.

THE CHAIRMAN: You mentioned two years, 1947 and 1948.

MR. HUME: Mr. Chairman, I might say that these figures will be discussed later in connection with the Railway Association brief -- they have them -- and the Canadian Automotive Transportation Association brief, ,

but the figures I have for 1947 are 425,803, and the preliminary estimate for 1948, the time this was prepared, was 435,000.

THE CHAIRMAN: Licensed motor vehicles -- does that refer only to freight trucks?

MR. HUME: I think, Mr. Chairman, it refers to all kinds of trucks.

THE CHAIRMAN: It does not include, then, cars, family cars?

MR. HUME: No, no, sir; just trucks.

Q. Have you, Mr. Kelly, made any investigations to indicate what percentage of those 435,000 trucks are the ones that you are concerned with, that is, the for-hire trucks?

A. We haven't attempted to analyse it at all.

Q. Well, if I suggested to you that certain investigations have been made and they have been found to be less than ten per cent, would you agree that that might be about accurate?

A. I cannot dispute a question when we have made no study of it ourselves.

Q. So that those who have made a study have estimated that of those 435,000 trucks something around 43,000 only -- that is, about ten per cent -- are engaged in the for-hire trucking; we can assume that if that investigation has been made that figure is approximately accurate?

A. May be.

Q. So that when you have eliminated from Part I of your brief ---

THE CHAIRMAN: Mr. Hume, right there, would you give us a general idea of what the other trucks are engaged in?

MR. HUME: Well, I do not think I am competent to do that.

THE CHAIRMAN: You say that the figures show that there are only ten per cent, about 43,000, engaged in trucking for hire?

MR. HUME: Yes, Mr. Chairman.

THE CHAIRMAN: And then there remain ---

MR. HUME: Ninety per cent.

THE CHAIRMAN: A great number.

MR. HUME: Yes.

THE CHAIRMAN: What are they doing?

MR. HUME: They are trucking farm produce, they are trucking freight for owners, they are trucking freight on a contract basis. Take, for example, the breweries, which I have already mentioned; as I understand it, in the province of Ontario the breweries have formed jointly a transport company that carts their product throughout the country under a name, but they are not for-hire truckers; they only carry the products of these one or two companies that own them. They are engaged, for instance, in a city where you have a large departmental store, which may have a hundred or a thousand trucks for delivery. They are engaged in the pick-up and delivery service of the railroads, they are engaged by the milk companies to deliver milk, and I could go on and on and on. The adaptability, you see, is so unlimited that it is difficult to give you, sir, any composite picture, but at least for the purposes of my cross-examination I have stated that there have been estimates -- and I think the Commission will hear more about it -- that about ten per cent are engaged in the for-hire business.

Q. So that when you exclude from your worries under Part I, as you did to my friend Mr. Covert yesterday,

the owner-driven truck, exclude everything except the for-hire truckers, you realize now that you are talking about about ten per cent of the total trucks in Canada?

A. That is the figure you have given us.

Q. We will assume for the sake of our discussion that that is correct. Now, you have also, I think, exempted certain of those 43,000 trucks in your examination yesterday by Mr. Covert. You exempted, as I recall it, the furniture movers?

A. I think we said yesterday that the truck had made its place, and there were certain commodities in regard to which the public demanded that service. Some counsel, I think, drew an illustration of a man wanting to move from Ottawa to Montreal, and we admitted that public demand was best served by the truck, which would back up to his door, take his furniture and place it in the home, even in the rooms of the home, to which it was being moved. That was but a small fraction of the ---

Q. And you agreed that those movers, whether they hauled from Halifax to Vancouver, are still filling a service that the public have come to demand, and you are quite happy about that?

A. I am not at all ready to admit that anybody moving from Halifax to Vancouver, as you just cite, would employ a truck.

Q. Do you know whether people do employ trucks?

A. They may. You can go to California on a bus; I presume you could ship there by truck.

Q. Did you ever hear of the Hoyt's Moving Van Company of Halifax?

A. You may have them; I am not attempting to dispute it.

Q. So that I am suggesting to you that you have

said yesterday -- and I want to know if you agree with me -- that the public have come to demand that type of service, and you are not disturbed about that?

A. No, but again I say that any such service, if it were of importance to warrant, would be given consideration by the over-all planning commission or board that we talk of.

Q. Yes, but you did not mention anything about a board yesterday, where on page 6958, in talking about this moving van business, you say:

"I realize the truck has built a service of that kind that people are going to demand and there just is not anything that anybody can or should do about it."

Were you correctly reported?

A. I would still go with that.

Q. So that nobody should do anything about the moving people, no matter what their percentage is, whether they have five trucks or five thousand?

A. Now, I am not going to suggest to you or to the Commission that I am in any position to suggest to any of the people of Canada what they should do and what means they should hire. You are attempting to have me say that nobody should do anything about the furniture van; I am not attempting to do that, and I am not going to.

Q. I am not trying to have you say anything, Mr. Kelly. I am reading something that you said yesterday, and I want to be sure that I understand you correctly.

A. What I tried to say yesterday -- and I hoped I made it clear -- was that the fellow who wants to move from Montreal to Ottawa or from Ottawa to Montreal, or something of that kind, we know of many cases where they

employ the truck, which will back up to the door, will even take your furniture without being crated, and will move it for you and set it in the home to which it is being moved. I said I did not propose that anybody could or would do anything to prevent that service which the public had come to demand.

Q. Now, today you are saying "could or would"; yesterday you said "could or should", and there is a difference between them. I am not quibbling with you; it is an important point.

A. Then what are you doing?

Q. You said yesterday that nobody should control that kind of truck movement; now today you are saying nobody would, and I am not so sure they would not.

A. May I retract the word "should" now, and suggest that if an over-all planning commission decide, they will have authority to say what service that truck should render.

Q. Right; and therefore if I want to move somewhere and the over-all planning board has said that they should not, then I am not going to have the same service that you said yesterday the public have come to expect and demand with regard to moving ?

A. I am assuming that the over-all board when formed would give consideration to public necessity and convenience, and if in their judgment they provide regulations to permit the continuance of that service or restrict it within certain fields, or whatever they might deem to serve public necessity and convenience, I am assuming that they would make regulations accordingly.

Q. So that today you are bringing back into the fold of this regulatory body the furniture movers?

A. I had no intention of excluding from the

jurisdiction of such a body if they were set up and so on; if I did so yesterday I regret it, and I wish to retract it.

Q. Well, we have corrected it, then, this morning?

A. Right.

Q. Now, Mr. Kelly, in connection with your sub-missions -- and I am reading from the second paragraph on page 1, the last sentence--you state that your Association maintains that such interest demands reliable service with maximum standards of efficiency, safety and accommodation to meet public necessity and convenience, ensuring uninterrupted service upon which industries and communities must depend. I would like to have you explain to me whether by that word "communities" you mean the communities that are served today by rail?

A. Not only those served by rail. What we had in mind was the community of considerable size, say on a branch line of a railway. Truck service has been instituted through that community, which has taken from the railway a portion of the traffic, and has met the needs of the community for a portion of the traffic. Now, that continues until the traffic has been weaned away from the rail to the truck to the point where the railway applied to the Board of Transport Commissioners for authority to discontinue the service or perhaps abandon the branch line. Now, if they are successful in that application, the whole burden of transportation and the whole service to the community in respect to transportation rests with the truck. Then we find possibilities -- there have been cases referred to -- where the trucker or more than one of them on whom the community has to depend for transportation have just flopped and gone out of business. Now, they cannot put

a railway out of business; they cannot deny to a community a railway service without a hearing, an application to the Board. Some authority must decide.

Q. Mr. Kelly, you have made a statement now that you have heard of communities that were no longer served by rail where the truck facilities collapsed; give me the name of one such community in Canada.

A. No.

Q. In other words, you are making a vague, general statement which you have no instances to back up; is that correct?

A. No, I am not going to admit that we are making a vague, general statement that we have no proof of. At the moment I haven't any proof in my possession, but we can find in our records cases of where communities have been deprived of rail service, first because of the unregulated competition of the truck with the railway, prompting the railway to abandon or apply for and have the service abandoned, and later we find they are at the mercy of the truck, and there is no guarantee, as we understand it, that the truck will perpetuate the service that they require, and if the truck flops on them the community is left high and dry without public transportation service.

Q. You are stating that, then, as an actual fact; you have instances of that in your office; are you saying that?

A. We have records of it that have been given to us by our different regional offices.

Q. Is it possible over the noon adjournment to bring the names of any of those?

A. I am not going to attempt to do it, sir.

Q. In other words, you are now neither able nor

willing to attempt to give me the name of any such community?

A. I am not going to attempt to do it.

Q. Right; that is all I want to know, thank you. How many communities in Canada do you estimate are not served by rail and are at the mercy of the truck, as you put it a moment ago?

A. How many communities?

Q. Yes.

A. I have no record.

Q. Now, paragraph 5 of Part I starts off:

"The railways are indispensable in both times of peace and of war. They are the only dependable means of transport for all commodities in all seasons, to all places served by them."

I merely want to ask you, Mr. Kelly, in order that I may understand what you are driving at, if you imply there that in the trucking industry that industry is not carried out twelve months of the year?

A. What we say there is that the trucking industry cannot handle, is not physically capable of handling, all commodities. There are times in the year, because of snow conditions and other road conditions, when trucks cannot operate, so that we say here that the railway is the only dependable means of transportation for all commodities at all seasons of the year.

Q. So you are suggesting that there are times in the year when because of snow the truck cannot operate?

A. And also that there are commodities requiring --

Q. I am not quarrelling with you on the commodities; I admit that freely. I am just talking of this question of the seasons, because we have heard quite a bit about the trucker running in the bright summer weather and

closing down in the winter, and I just wanted to know if that is what you meant when you referred to the word "seasons" in that sentence?

A. I think you understand our meaning.

Q. Have you had an opportunity of looking over the brief that has been filed by the Canadian Pacific Railway?

A. No, sir.

Q. Well, may I refer you to Part I, page 75, where they say:

"The highways are to a large extent kept open during the entire year."

That is their view; do you agree with that?

A. To a large extent; our experience in the east is that.

Q. And you mentioned yesterday the service between Toronto and Montreal; do you agree that except for exceptional snowstorms the service is a regular twelve-months-a-year service?

A. That is correct.

Q. And that that may be true right across the whole country?

A. That is correct.

Q. Now, in the next paragraph, the word "protected" -- I should like to find out what you mean by that. The paragraph says "railways must be maintained, controlled and protected"; now, what do you mean by the word "protected"?

A. "Protected against unregulated transport agencies."

THE CHAIRMAN: The word "protected" is not alone; it is "protected against unregulated transport agencies."

MR. HUME: I appreciate that, Mr. Chairman, yes.

Q. It must be maintained, controlled and protected

against unregulated transport agencies; I just want to know what you mean by the word "protected"; do you mean that it must be ensured its monopoly? Is that what you mean by "protected"?

A. I mean -- and I think we explained yesterday, and you have mentioned it again now -- in the service from Toronto to Montreal; we say that it must be protected against unregulated --

Q. Transport agencies?

A. Transport agencies which operate over parallel routes. We see no justification for a fleet of trucks to operate parallel with two main lines of railway between Toronto and Montreal, for commodities between those points.

Q. Right. Now, let us take that example that you have just given, Toronto and Montreal. Do you know any truck transportation between those two cities that is not subject to some sort of regulation?

A. Yes -- no, I don't know of any transportation that is not subject to some sort of regulation.

Q. All right; so that when your sentence says "protected against unregulated transport agencies" that does not apply between Toronto and Montreal?

A. Possibly we were faulty in the use of our language. We should have conveyed more clearly the thought that the regulation of transport agencies is not comparable to that imposed upon the railways for parallel service.

Q. Is it fair to say this, that what you mean is, protected or regulated from the railwayman's point of view?

A. Regulated in consideration of their competition with the railway, at least subject to comparable

regulations for the carriage of that traffic to those imposed upon the railway.

Q. I suggest to you that the provinces of Ontario and Quebec in this run we are talking about have got regulations in force?

A. Of their own.

Q. Of their own. And I take it also that you do not like them?

A. Because apparently in their licensing and in the regulations which the provinces impose within their boundaries, they have not given a full and proper consideration to the fact that the railway is there as one of the transport agencies.

Q. Yes; so therefore I take it that you do not like them for the reason that you have just now put on the record, and that that means that you do not like them because they do not adhere to your point of view?

A. I do not like them because of the fact that they regulate in a sort of way within their provincial boundaries the transport of goods for hire, and they do not regard the fact that the railway operates, and can and will and does provide service on parallel routes from and to the same point. We feel that to regulate one and not apply comparable regulations to another must breed unfair competition.

Q. Yes, certainly, from the standpoint of repetition, I understand; but what I am trying to suggest to you is that trucks on that run are regulated but that you do not like the regulations because they are not from the railway point of view; is that a correct statement?

A. No. We do not like them because they do not treat all forms of carriers for hire in the same

manner; the same regulations do not apply to all who give that service.

Q. Now, when a trucking concern wants to get a franchise to run from Toronto to Montreal it has got to go, as has been said, to the Ontario Municipal Board; is that not correct?

A. I believe so.

Q. And the railways turn up at those applications, don't they? The railway counsel turn up?

A. I don't know what the railways do.

Q. Your organization turns up on some of them, don't they?

A. On some of them, yes.

Q. And you are given perfect freedom of expressing your views?

A. That is right.

Q. And the decisions as to your views of the regulations do not always result in a decision that you like; is that correct?

A. That is right.

Q. And therefore when you speak of unregulated transport agencies you mean that the regulations that are issued are not regulations that you want to see in?

A. I mean that the regulations for the common carrier or the carriage of traffic are not uniformly applied or uniformly applicable to all who engage in that form of transport on that point.

Q. They are uniform between Toronto and London, Ontario, aren't they?

A. Between the truck and the railway?

Q. No; are you talking about the uniformity of provincial regulation on the trucking industry or the uniformity of regulation over the whole transportation?

A. The point I am trying to make (and you say we find fault with the regulations because we do not like them and they do not suit the railway purpose) -- the point I am trying to make is that our objection to the regulations is that they cover the traffic between two main points by different forms of carrier, but the regulations are not uniform in application to both forms of common carrier.

Q. So you would want the same regulations applied to trucks as you apply to the railways

A. As far as it is practicable to do so.

Q. Do you want the same Board of central organization to control both?

A. We feel that we could never have a national transportation policy until we have some central control.

Q. Then to get back to my question, do you think that the Board of Control of the railway should also control the trucks and thereby set up a sitting controlling authority.

A. That would be a matter that would have to be given consideration because of the amount of work involved and the various phases that would go into it, but there should be, in our opinion, some central authority and control that would give all transport for hire consideration.

Q. Well, in Principle No. 3 you suggest that buses and trucks be under supervision by a Transport Commission with like powers to the Board of Transport Commissioners. I just noticed that and I take it from that that you do not necessarily mean that the one Board is going to control the rail and trucks?

A. We are not attempting to suggest details of administration or attempting to suggest a policy

that we would suggest would be beneficial to the whole situation.

Q. Then supposing you had this Board constituted, or it becomes possible to constitute this Board and it turns out that all the members of this Board are from Mr. Frawley's province and they say "our regulation with regard to trucks is that there are not going to be any" with regard to rates and certificates of convenience. Now would you be satisfied with such a Board as that?

A. No.

Q. You want a Board to regulate the trucks from the railway point of view?

A. No.

Q. You want a Board to regulate the trucks from the truckers' point of view?

A. No, we want a Board to regulate the transportation of Commodities for the public necessity and convenience in fairness to all who are engaged in that transportation project.

Q. And you want a Board to regulate it to protect the railway at least on an equal footing with the trucker?

A. Yes.

Q. Now then, if I may refer to the last complete paragraph in Part 1 referring to the words about the middle where you say: "By no other means can each form of transport be allocated to the sphere to which it can best serve its purpose". Now, Mr. Kelly, I suggest to you --

THE CHAIRMAN: Where is that?

MR. HUME: It is Page 1, the last paragraph commencing "the need for uniform regulations. . . the bottom of page 1, the last complete paragraph on

the page and I read the sentence about "allocating to the sphere". The sentence reads "By no other means can each form of transport be allocated to the sphere to which it can best serve its purpose . . . ".

THE CHAIRMAN: But it calls them "uniform regulations and control by a central authority of all transport agencies" remember that.

MR. HUME: Yes, we have been talking about this central board.

THE CHAIRMAN: Now then "by no other means can each form of transport be allocated to the sphere to which it can best serve its purpose . . . ".

MR. HUME: Yes, Mr. Chairman.

THE CHAIRMAN: That ties it down, doesn't it, to one central authority that would have jurisdiction over all transport agencies?

MR. HUME: Yes, Mr. Chairman, and what I want to find out from the witness is what he means ^{by} "allocation to a sphere". Do you mean allocation as between trucks as a medium of transportation on the one hand, the railways on another, the pipelines on another, and the air on another, and the ships on the water as another? Is that what you mean by "all allocation of spheres"?

A. Not only that but we go farther than that; we say that in respect to highway transport. All through our brief and all through our submissions we say that it should not be in competition with railways on parallel routes. We believe a Commission, instead of having licensing authorities in the various provinces with regard to the services afforded by the railways granting highway licenses, a Commission should plan the truck licenses. They cannot move the railways but

they can plan truck licenses that would serve the people in conjunction with the railways as feeders, if you put it that way, instead of being competitors over parallel routes.

Q. So this "allocation to spheres" is that you are going to allocate the spheres in the trucking industry? You are going to tell the truckers what they can do and cannot?

A. And you are going to tell the railways what services they are going to place on the rails.

Q. Well, you have that now about the railways?

A. Yes, and unfortunately we haven't it elsewhere.

THE CHAIRMAN: What is that you said?

A. Unfortunately we haven't it elsewhere. We have it on the railways.

MR. HUME: Now then, when you say you haven't got it elsewhere do you know what the situation is in the Province of British Columbia about the regulation of the trucking industry in that province?

A. I will have to say to you as I said to the gentleman from Alberta, we did not deal with any specific provinces or their regulations.

Q. So that you do not know whether or not you have got it elsewhere?

A. That is right. I know where there are places we have not elsewhere.

Q. Specifically what places do you know that have not got it?

A. Ontario and Quebec, for example; highly industrialized provinces.

Q. Are you aware that neither of the provinces of Quebec or Ontario are taking part in this inquiry?

A. That is of no interest to me, sir; I am only making our representations to the Commission.

Q. So on this allocation to the sphere you are going to restrict the trucks to a sphere? It may be a different sphere, a feeder service or something that this Board can decide it could best do?

A. Depending on the decision of the Board and the best interests in public necessity and convenience and the interest of the carriers that are going to render that service.

Q. Suppose you had this Board in the allocation of services taking the same view that a lot of Boards take today that there is not any particular sphere for the trucking industry, they can go one thousand miles or five hundred miles?

A. I cannot conceive of any such decision but if it comes it will have to be met.

Q. Well, we had the word on Tuesday, I think, of a witness in Prince Edward Island who told us of a person in Michigan who wanted to send trucks to Prince Edward Island, pick up potatoes by truck and take them back. That is quite a distance, isn't it?

A. That is right. We have knowledge of trucking concerns in Michigan that wanted to establish and did establish a road service to use our Canadian highways.

Q. I am not asking about that. Let us not get off the subject. I was stating we had heard on this question of the allocation of sphere of a specific trucker in Michigan who wanted to send a truck to Prince Edward Island, load up with potatoes, and take it back again. Is your Board going to say that is something they should not do?

A. When a Board is constituted we will let them decide. I am not in a position to say what a Board which is not yet constituted may do.

Q. Then the Board, when it is constituted, if they said: "That is all right, you can go two thousand miles if you want to", would you be happy?

A. I do not suppose we would be unless the Board gave good and valid reasons for their decision. We would no doubt make representations.

Q. You see, you have one view and the truckers have another. There are two views on this subject are there not?

A. I presume every person is entitled to his view.

Q. Now the first paragraph on Page 2 of the printed brief commencing: "should present conditions continue without corrective action, the growth of unregulated highway transport for hire will cause even greater concern" -- may I ask you whether or not you mean by the word "unregulated" that the growth of unregulated transport by this central authority is what you mean?

A. You pointed out that highway transport for hire is regulated within provincial boundaries by provincial authorities. We say and complain that the regulations applicable to transportation do not deal in uniform terms with all of the carriers including the railways.

Q. This word "unregulated" must appear a dozen times in this particular one and I want to find out what was your definition of that word. You do not mean unregulated in the normal English sense because they are regulated in a great many provinces.

A. They are not uniformly regulated.

Q. You do not say that when you say "unregulated highway transport".

A. Then let me make clear that our opinion is that the regulations now applicable under provincial jurisdiction to highway traffic are not comparable to the railways which go on the same parallel routes. We think they should be.

Q. And how many railways are concerned when you talk about regulation of railways?

A. Anywhere that they are found that operate parallel transport services in competition with them.

Q. How many railway companies are involved in Canada that are regulated by the Board?

A. All except the Ontario North land, I believe, which is an Ontario government owned road.

Q. How many are there, do you know?

A. Ask some of the railway officers. I suggest they have them all at their fingertips.

Q. Are there five?

A. Five or more, I suggest.

Q. I want some figure. You must have some idea Mr. Kelly, as to how many railways are concerned?

MR. COVERT: Mr. Chairman, I do not know if the witness can give this or not. The only point I wish to make is I don't think the time of the Commission should be taken up if there is a better way of getting that information.

MR. O'DONNELL: About thirty. Two railways do about ninety-eight per cent of the business and the rest are small.

MR. HUME: So we have two main railways and some other small ones.

THE CHAIRMAN: You say the two large railways do about ninety-eight per cent of the business?

MR. O'DONNELL: Yes.

MR. HUME: For the purposes of the record does

my friend mean ninety-eight per cent of the railway business or ninety-eight per cent of all the business in Canada?

MR. O'DONNELL: Railway business.

MR. HUME: Now Mr. Kelly, you have a Board regulating about thirty railways. If I suggest there are twenty thousand truck operators operating in Canada doing regular business, how is your Board going to operate twenty thousand companies or operators?

A. I am assuming if there are twenty thousand truck operators in competition with the railways that it is just that much greater evidence of the need for some form of uniform regulations and that ways and means could be found by a Board or Commission if they were authorized to do so, to survey the question and set out uniform regulations and regulations which could be and should be followed by all.

Q. Out of four hundred and thirty-five thousand truck vehicles you have forty-three thousand for hire-vehicles operated by twenty thousand individuals and companies. Can you envisage the size of a Board that has to regulate^{and}/police across Canada that number of transport concerns?

A. I do not think there would be any strength in numbers of the Board. I think it would be a matter of judicious inquiry and development of regulations.

MR. SINCLAIR: I wonder, Mr. Chairman. It would help me to understand the cross-examination a little better if Mr. Hume could give the Commission the percentage of the forty-three thousand that are engaged in over-the-road transport for hire, how many are engaged in pick-up and delivery for hire and cartage for hire and the breakdown of four hundred and thirty-five thousand he has as to how many are for hire-carriers over the road?

THE CHAIRMAN: Well, he tells in that respect that about forty-three thousand operate for hire.

MR. SINCLAIR: Then some must be farm trucks, some must be gasoline trucks.

THE CHAIRMAN: I asked Mr. Hume to give us a general idea of what the other 90 per cent did and he answered that question.

MR. SINCLAIR: The proportion of the different types of trucking in that percentage -- that is important.

THE CHAIRMAN: That is, what proportion delivered milk?

MR. SINCLAIR: What are farm trucks and so on.

THE CHAIRMAN: What proportion of the forty-three thousand did what?

MR. SINCLAIR: Well first I think we should take the four hundred and thirty-five thousand.

THE CHAIRMAN: Well, he tells us that there are forty-three thousand which are operated for hire. Now what is it you want to know?

MR. SINCLAIR: Where do they operate for hire, within the limits of the city or within five miles of the city or are they engaged in commercial transportation or are they contract truckers only handling one business' goods or contract carriers.

THE CHAIRMAN; I think Mr. Hume described the contract truckers as being part of the ninety per cent. He referred, for instance to several breweries. They formed their own association but others had to make contracts with individual industries to deliver their goods but they are not within the ten per cent. Is that right, Mr. Hume?

MR. HUME: Mr. Chairman, I am at a considerable disadvantage--

THE CHAIRMAN: I think you let me understand that about ten per cent, forty-three thousand are available to

the public for hire.

MR. HUME: Yes, Mr. Chairman, that is the impression I intended to give.

THE CHAIRMAN: Now if they are, Mr. Sinclair, what is it you want to know?

MR. SINCLAIR: What I am saying, Mr. Chairman, is he speaks of four hundred and thirty-five thousand trucks. What I would like to know is how many of that four hundred and thirty-five thousand are engaged in over-the-road for hire trucking?

MR. HUME: I have told you that; I have estimated it at forty-three thousand or I have said that estimates have been made that that is the figure.

MR. EVANS: It would interest me, Mr. Chairman, and I think my friend is best able to provide the information, what proportion of the so-called over-the-road trucks are over-the-road for-hire trucks? My friend has suggested that the for-hire operations by truck is a relatively small proportion of the total number of trucks. I suggest that if my friend wishes the information broken down it will be found that the percentage of over-the-road trucks which are for-hire trucks is much higher than ten percent.

THE CHAIRMAN: Well, Mr. Hume, what particulars can you give us?

MR. HUME: Mr. Chairman, I cannot answer that question.

THE CHAIRMAN: You appear for an Association that probably has those figures, don't you?

MR. HUME: If those figures are available, Mr. Chairman, then I will endeavour to secure them, but my position before this Inquiry is this, and I may as well state it now because it will have to be stated at some time.

Now Mr. Chairman, I have said more than once that this Commission is enquiring into matters within Federal jurisdiction and the industry that I represent originally took the position, and I am instructed still take the position, that they being under provincial jurisdiction, are not the subject of this Inquiry but because of the fact that the trucking industry is tied up in the problems that this Commission has got to solve, I am here to give whatever assistance I can and to make sure that the true picture appears before you.

Now I have not come prepared to be the subject of an inquiry nor have I got a lot of these figures that I know my railway friends would like to have or whether I can get them, I do not know, but I do say that if Mr. Evans or Mr. Sinclair will write out what they want, I will turn that over to my clients and see if it can be procured and if it is a matter of interest to the Commission we will read it in.

THE CHAIRMAN: In the first place, you are here because you chose to come here?

MR. HUME: Yes.

THE CHAIRMAN: And consequently you have undertaken now to cross-examine Mr. Kelly who is speaking for a certain Brotherhood of railway employees and you have all the liberty you wanted to cross-examine him.

MR. HUME: Yes sir, I was not suggesting for one moment that I had not.

THE CHAIRMAN: I think you should also do what you can to help us in our requirements here. I think you should also give it in writing. Can you put into writing what you want, Mr. Evans?

MR. EVANS: I think perhaps that I had said in the transcript what I wanted and that that would be clear enough for my friend. If it is not I shall be glad to

state it in writing and I might say I did not do this with any intention of embarrassing my friend. I thought he would have it available and I am interested in having it.

MR. HUME: Mr. Chairman, I will repeat what I said, that if I can possibly get this information I will do so.

THE CHAIRMAN: Well, let us know more about it. Let us know later whether this matter has been arranged satisfactorily.

MR. HUME: Yes, Mr. Chairman, I will make sure the Commission hears whatever is arranged.

Mr. Kelly, I want to turn now to your principles contained on Page 3 of the printed brief and my friend, Mr. Frawley, has cut down my examination considerably because he has covered some of the ground, but there are some questions I want to ask about it. No. 3 is in essence that you want buses and trucks to be under the supervision of this central authority we have talked about and especially with regard to the fixing of rates, tariff charges, accommodation, and facilities for passengers and shippers et cetera. Will you agree with me, Mr. Kelly, that in matters that are intra-provincial that that should properly be left where it is now with the provincial governments?

A. I cannot agree with that thought.

Q. You see, Mr. Kelly, you have got this problem, that in the Province of British Columbia they go a little bit along the way towards what you would like to see and in the neighbouring province of Alberta they have a completely different view. Are you going to impose upon the people of the Province of Alberta by a Central Committee some regulations about fixing rates that they do not want?

A. As long as highway transport is in the field of supplying passenger service or transportation service from Prince Edward Island to Vancouver, or from Sydney, Cape Breton to Vancouver, we think that it is only proper for the protection of people who use that service that there be some central body and some uniform authority and uniform regulations applicable to it.

Q. All right, thank you. You have answered No. 4 for me. No. 7 -- "That no bus or truck be permitted to operate on the highway for revenue purposes where adequate transportation facilities already exist or where the steam railways can and are willing to provide these facilities".

You have answered some questions from my learned friend, Mr. Frawley on that point, but there are a few things I would like to get clear. Do you agree with me that if the railways had provided the same facilities between Toronto and Montreal that the trucks provide, that you would not have any problem about trucks?

A. I cannot agree with you entirely because the question of rates comes into ^{it} as well as facilities.

Q. There was a time when the truck rates in Ontario were higher than the rail rates before this recent increase. Do you know that?

A. I do not know.

Q. Do you know there was a time when a truck rate was higher than the rail rate that the shipper still used a truck?

A. I do not know that.

Q. Will you agree with me that if I am a manufacturer of desks and some truck will come to my factory and load these desks without any crating and take it by direct route to my customer in Montreal that that is a facility that the

railway cannot now duplicate?

A. If you had the same form of regulations governing all forms of transport for that desk, I assume that it would all be on an equal footing.

Q. Would you suggest that if I wanted to ship one hundred of those desks that I could put them in the freight car without crating or protection around them?

A. I understand there are certain regulations and again the railways would have to answer the question. There are certain regulations, I believe, that form the railway tariffs and the conditions under which you can ship by railway that are not applicable to shipment by truck. I think that is another example of necessity for uniform regulations.

Q. Is there any imposed regulation that dictates how I crate this for shipment by freight or is that the railway's own regulation for the protection of the article?

A. I cannot answer you; you will have to ask the railway.

Q. I suggest to you then that if either for the protection of the article or because of sensible railway regulations I have to crate that desk that that is a facility that the railways cannot now offer that the trucking concerns can?

A. That the Board might tell the truckers to apply.

Q. If you had a desk and the trucker said to you: "Now take that without crating it", would you ship it?

A. As long as it was received at the other end in the same condition as I shipped it I would have no reason to object.

Q. Then you talk about the speed. I understood from

your evidence yesterday that between Toronto and Montreal goods left Toronto at approximately six o'clock and were delivered the next morning at Montreal?

A. Approximately at that hour.

Q. Is that express or freight?

A. That is freight.

Q. Is that a service to your own knowledge that is going on without delays or interruptions?

A. Our men that are actually engaged in the operation of trains tell me so. I think the railways would verify it.

Q. Then, supposing I have merchandise in Charlottetown that I want to ship to Ottawa, how long should that take by freight?

A. I don't know.

MR. CAMPBELL: It is eight days to O'Leary from Charlottetown.

MR. HUME: Mr. Campbell says it is eight days to O'Leary from Charlottetown. How many miles is that, Mr. Campbell?

MR. CAMPBELL: Eighty miles.

MR. HUME: I am not commenting on that.

MR. FRAWLEY: Not again, surely.

MR. HUME: Do you agree with me that a truck can cover that eighty miles in less than eight days?

A. I think it is absurd to ask such questions.

Q. You mean you agree?

A. I do not agree with the question at all; I think it is an absurdity.

MR. CAMPBELL: It is in the record.

MR. HUME: If it takes eight days -- and it is in the record -- for freight to move eighty miles --

I am not being critical; we are trying to get your idea on this. If it takes one day or eight days to go eighty miles, do you agree that a truck could cover that distance in a better time than one day?

A. That is right.

Q. And am I right when I suggest that that is one of the reasons for the growth of the trucking industry?

A. That is right.

Q. And the public have come now to depend on that and to expect it?

A. Yes.

Q. And you are going to say in Principle No. 7 that if they run parallel with the railways at all they will have to go?

A. No, we say in Principle No. 7 that where the steam railways can and are willing to provide these facilities.

Q. You said yesterday and you said to my friend, Mr. Frawley, in the points he mentioned that you could see no justification for any truck running between Toronto and Montreal for hire because the railways go there?

A. That is right.

Q. And I say that if the customers can handle their freight faster on the trucks than the railways, would you agree that that is because it is a facility that the railways cannot offer?

A. Between Toronto and Montreal where there is a great deal of traffic moving the railways do provide transportation facilities with equal speed and convenience.

Q. Are you suggesting that the railways move between Toronto and Montreal with the same speed and convenience that trucks do?

A. I believe they do.

Q. So that if it is shown at some subsequent time that is not so, then your views would have to be altered as shown in Principle No. 7?

A. We will consider the evidence that proves it.

Q. Since the invention of the internal combustion engine has the railway improved its service between Toronto and Montreal?

A. I do not know that the internal combustion engine has got anything to do with it because both railways, I understand, for a considerable time have been providing a fast over-night service with the closing of the shed at Toronto at night and the opening of the shed in Montreal in the morning.

Q. Would you say that the advent of the internal combustion engine in Canada has improved service?

A. That would be a natural conclusion to reach, if the railways could meet their service but it would be only natural that they would do so.

Q. So that the truck has something that the railway has not got and that the railways then tried to improve their service to try and match that?

A. That is so; they have a concrete road bed.

Q. The growth of the industry indicates that the public wants that service?

A. I do not know that there is any indication that the public wants truck service between points such as Toronto and Montreal.

Q. Have you studied any figures to show the decline of the shipment of food supplies to an urban centre like Montreal as between truck and rail over the last twenty years?

A. No.

Q. Have you any figures as to the decline of food

supplies to any of our urban centres?

A. No.

Q. You will agree with me that before the gasoline engine was adapted to the truck that all that food came in by rail and water?

A. Before there was a truck service?

Q. Yes.

A. I presume the bulk of it must have because there were no other means.

Q. And you have not given any study to why that shipper has switched over to the truck from the surrounding countryside?

A. No.

THE CHAIRMAN: Any more questions?

MR. O'DONNELL: I have not any questions but yesterday Mr. Kelly said at Page 6970, and I think it was without really appreciating the words used that

"one of our railways is owned by the people of Canada and has run into operating deficits".

I think it is more or less common knowledge that the deficits are not operating deficits but they were deficits which have occurred through the obligations to pay very heavy interest charges and that sort of thing.

A. I had no thought of anything only the deficit that has been given publicity, not the details of how it was created.

Q. I thought that was the fact.

A. It was the burden on the people that that deficit which was the only thought I had.

MR. SINCLAIR: Mr. Kelly, dealing with the national transportation problem, am I correct that as a matter of principle you say that there should be uniformity of legislation for all forms of transport throughout Canada?

A. Transport for hire; that is our general thought.

Q. And if there is a bright spot in British Columbia and dark spots somewhere else --

MR. FRAWLEY: Thank you very much.

MR. SINCLAIR: -- all you are suggesting is that we should have something uniform so we can have it throughout Canada for the good of the people.

A. As a necessity for the protection of the railways which are necessary to our national economy and serve all of Canada. There should not be a block at one particular point, that is unnecessary or inequitable. It should be removed.

Q. And if that can be done by co-operation between the province and the Dominion you would be satisfied with that?

A. We are hoping that that can be done.

Q. And if the Dominion has jurisdiction over inter-provincial transportation you think they should exercise it on highway transport?

A. Anything that will bring about uniform regulation and control.

Q. Now the only other part that I want to deal with, Mr. Chairman, is Part 3 of the brief dealing with the proposed amendment to the Railway Act. Now regarding Section 179, Mr. Kelly, do you know of any other industry, public utility or otherwise that now has the measure of protection to its employees that is under Section 179?

A. I do not know.

Q. Mr. Kelly, if the Canadian Pacific moves its employees to a new location, for any reason, it pays the cost of moving, transportation cost of moving furniture, the expense of moving the man and his family to the new location; that is correct, is it not?

A. That is right; I believe that is correct.

Q. And they also at the new location pay for a minimum of one month all the expenses of the employee and his family while he is trying to find suitable accommodation in the new location?

A. You are speaking now of conditions covered by 179?

Q. I say for any reason.

A. For any reason they transfer an employee?

Q. They pay his expenses at the new location until he can find suitable accommodation for a minimum of one month; is that right?

A. That, I presume, would apply to their salaried officers, executive and supervisory, that they move from point to point?

Q. And also to their clerks that they may move -- say they move a stenographer from Winnipeg to Montreal, do they pay for that too?

A. I have no knowledge of that.

THE CHAIRMAN: I think, Mr. Sinclair -- go on if you have another question on the same ground.

MR. SINCLAIR: I was going to say, I used the word "minimum" because under special circumstances or when it is reasonable they extend it beyond that period of one month. It depends on the circumstances existing, whatever accommodations are available, etc.

THE CHAIRMAN: Well, I understood yesterday Mr. Kelly's complaint was addressed rather to cases where

a railway moved almost all its employees from one place to another because that place is ceasing to be a divisional point or for some other reason and they all have to move except a few who are left there and consequently the houses they have built or bought are left behind and lose their value because the place has ceased to have the importance it once had, and they have no compensation for that sort of loss.

Q. I think that was the complaint you made, wasn't it?

A. That is so, Mr. Chairman.

THE CHAIRMAN: How would you meet that?
How would you answer that?

MR. SINCLAIR: Well, the question I put to the witness, Mr. Chairman, was that, while 179 does not give an employee the right to have compensation from the railway where there has been a partial closing or abandonment of a terminal ---

THE CHAIRMAN: Well, does 179 provide for compensation where there is only a partial abandonment?

MR. SINCLAIR: No; where there is a total abandonment.

THE CHAIRMAN: A total abandonment; that is what I understood. Now, the point is, should that section be amended to go further?

MR. SINCLAIR: That is right, my lord; to provide for similar accommodation when the abandonment is only partial, but nevertheless damaging to the employees. I suppose if any amendment were made it would consist of one allowing the Board of Transport Commissioners to judge in a case of that sort.

MR. SINCLAIR: Well, the point I was making with the witness, my lord -- what your lordship says is

undoubtedly right, but even now, without any amendment, they have advantages not enjoyed by any industry in Canada; and, secondly, I asked the witness whether the Company did not on moves give some assistance to employees for expenses incurred by those moves.

THE CHAIRMAN: Yes, you have brought that out. Then when an employee is moved he is compensated, he is paid for his moving; that is one thing, but this, you see, is another thing; it is abandoning a location and causing a total move, and I think the complaint is that the totality of the move is disguised by leaving a few people there.

MR. SINCLAIR: Very well, I will deal with that.

THE CHAIRMAN: So as to make it look as if it was not an abandonment.

Q. Is that right?

A. That is right, Mr. Chairman. I wonder if I might say something for the purpose of the record. We spoke of Big Valley yesterday. We have since ^{from our} found files that in normal operating times at Big Valley there were twenty-five engine crews and twenty-five train crews employed out of that terminal; as a result of the change made and the partial abandonment of that terminal, instead of being twenty-five crews they were reduced to two crews in both train and engine service, which will give some indication of the necessity for men to sacrifice their homes and move to other points. There were at least twenty-three train crews and twenty-three engine crews for whom there was no longer work at that terminal.

COMMISSIONER INNIS: Q. How large a town was it?

A. The town, I believe, sir, was originally on the townsite set up by the railway, and there was nothing

there, as we have it, except possibly the odd storekeeper, and the balance were railway employees.

Q. Yes, but how many people would be in the town?

A. Well, judging from that number of crews, that would be 125, in addition to their families, and the servicing that would go with the town.

Q. And how many people moved out? Have you any figures on that?

A. In so far as these crews were concerned, they were reduced from twenty-five crews of five men each to two crews of five men each.

Q. Was this the townsite in which the property was owned by the railways, in which the houses were owned by the railways, or -----

A. Originally I believe the townsite - some of our Canadian National men can correct or confirm it - I believe originally when the railroad was built and the terminal was built a townsite was located, and the men owned their own houses, built their own houses, and then when they were required to leave there was no property value for the houses, because the mainstay of the town was the railway service.

Q. There was no arrangement by which the company owned the houses and rented them to the employees; it was a matter of ownership of property?

A. As I understand, these men, a substantial number of them, had owned their houses.

THE CHAIRMAN: Q. Including the land? Had they bought the land too?

A. I understand so from the railway. And we have one other instance that might be incorporated

in the record: ^{on the} New York Central System at Niagara Falls the railway decided to transfer the switching normally done in that railway terminal to the American side, over at Suspension Bridge, New York, and they closed the yard at Montrose, partially abandoned it , left only a transfer service across with local cars. The record shows that they reduced the number of employees from 130 to 70 - 130, the normal complement of staff, to 70, a reduction of 60 persons. I am sorry to have interrupted.

COMMISSIONER INNIS: Q. But you make no reference in your remarks to the sort of community which might grow up in a centre of this sort and which is destroyed by the necessity of moving?

A. Well, the point is, in Big Valley, the picture that we get of it, that Big Valley was a railroad terminal -- no community, no community life there except that created by the fact that it was a railway terminal, and when the terminal work was removed and it was partially abandoned to the extent indicated, there just wasn't anything left there.

COMMISSIONER INNIS: I was wondering, Mr. Sinclair, whether you were thinking of possible comparisons in the pulp and paper industry, where there was a threat to close down a plant down, and that led to intervention by the provincial government -- would that be a parallel case?

MR SINCLAIR: Well, you have the telephone people, who have their employees spread right across the country, public utilities, chain stores, who have their units developing products at certain points, or a jam factory, for instance.

2. Now, this Big Valley case arose out of the amalgamation of the Canadian Northern and the---

THE CHAIRMAN: Mr. Sinclair, I do not think Dr. Innis' question has been disposed of yet.

MR SINCLAIR: I am very sorry.

COMMISSIONER INNIS: My point is, here is a large organization which has a company town. Now, as I understood your question, it was to the effect that there were no other industries in which that was the case, and I was raising the question as to whether the pulp and paper industry, for example, did not perhaps suggest that there were.

MR SINCLAIR: What I asked the witness, Dr. Innis, was, where could he point to any legislation dealing with any other industry that already had the protection now in 179 of the Railway Act?

COMMISSIONER INNIS: I see; you are emphasizing the legislation.

MR SINCLAIR: Yes. I am not saying that other industries sometimes do not operate in different ways.

THE CHAIRMAN: Well, I think probably the question is, where should the application of 179 cease? If there is a total abandonment, then apparently what you might call justice is done. Where is the point at which you would say, while this is not a total abandonment, there is just as much injury done, therefore there should be similar compensation? Should the section be amended to allow somebody to adjudicate on questions of that sort? Isn't that the question?

THE WITNESS: That is it, sir.

MR SINCLAIR: If I may, Mr. Chairman: The Big Valley case arose out of the amalgamation of the Canadian Northern and Grand Trunk at that point.

THE WITNESS: And the diversion of traffic resulting therefrom.

MR SINCLAIR: That is right; therefore if that happened to-day the employees would be protected under the provisions of the Canadian National-Canadian Pacific Act.

THE WITNESS: I do not so understand it. 179 says the total abandonment.

MR SINCLAIR: But the Canadian National-Canadian Pacific Act dealing with cooperative measures protects employees as to any loss that they may sustain by the implementation of such cooperative measures.

THE WITNESS: That is true, but it does not---

MR SINCLAIR: So the Big Valley case is not a very good example.

THE WITNESS: It still does not extend the principle of 179 as it was evidently originally intended.

MR SINCLAIR: Q. No, but there is another act now, Mr. Kelly, that takes care of the problem that arose at Big Valley; that is correct, is it not?

. I would like to be certain, sir, that it completely covers the situation, and I am not.

Q. Can you give me any example---

THE CHAIRMAN: Q. When did this Big Valley case occur?

A. 1931, sir.

THE CHAIRMAN: I see; that was before the cooperation legislation was passed.

MR SINCLAIR: It is reported in volume 21, 1931-32, Judgments, Orders, Regulations and Rulings of the Board of Transport Commissioners, at page 290.

THE CHAIRMAN: I presume they held in that case that there had not been an abandonment; is that so?

MR SINCLAIR: That is right; and it was under section 179.

THE CHAIRMAN: Now you say that for the future, or since 1933, with cooperation, where there has been abandonment the employees are taken care of; is that right?

MR SINCLAIR: The provision of the other Act is now operative.

THE CHAIRMAN: What about the case where a locality is abandoned without cooperation?

MR SINCLAIR: If it is abandoned, sir, 179 applies.

THE CHAIRMAN: Then there must be a total abandonment.

MR SINCLAIR: Quite so.

THE CHAIRMAN: That is just what Mr. Kelly complains of. Very often a partial abandonment is just as damaging to the employees as a total abandonment would be, and he thinks that 179 should be amended to look after that sort of case.

Q. Isn't that right, Mr. Kelly? Isn't that what you say?

A. That is correct, Mr. Chairman.

THE CHAIRMAN: Well, is there any answer to that, or any counter suggestion to that? We can get it later, perhaps.

MR SINCLAIR: I would like to ask Mr. Kelly, sir, if he is inferring that the Canadian Pacific Railway would merely leave a skeleton staff, so as to deprive their employees of compensation. They would be entitled to under section 179 of the Railway Act.

THE WITNESS: My only answer could be to that, that we have had experience at Big Valley.

MR SINCLAIR: Well, that is not on the Canadian Pacific.

THE WITNESS: It was not on the Canadian Pacific. We are attempting to ask that recommendation be made to extend the provisions of 179 to cover partial abandonment, which has almost identically the same effect as total abandonment. It causes a loss. We are attempting to have it extended to cover a situation, not a railway.

THE CHAIRMAN: Well, we will adjourn until half-past two.

---At 1:00 p.m. the Commission adjourned until 2:30 p.m.

(Page 7102 follows)

A F T E R N O O N S E S S I O N

A. J. KELLY, CROSS EXAMINATION BY MR. SINCLAIR
CONTINUED

MR. COVERT:: Very well, Mr. Sinclair.

MR. SINCLAIR: Q. Before adjournment Mr. Kelly, we were discussing Section 179 of the Railway Act. Now, Mr. Kelly, how would you determine what was or what was not partial abandonment?

A. I think, sir the only way to determine it would be by an appraisal or an inquiry into the traffic that had normally existed, and the number of employees required at that terminal to normally handle that traffic, under the one set of circumstances, against comparable conditions after the change had been made.

Q. How far down the line would you go; say there were five crews at a terminal, and through a re-arrangement of traffic, one crew was no longer needed there. Would that be a partial abandonment?

A. We had no such thought, sir. At every terminal, almost every terminal, on every railroad, where crews are employed to begin and end their trips, there must be provision made for the fluctuation of traffic; and crews are increased or reduced, according to the traffic needs.

It is not unusual to reduce one, two, three, or five or more crews, depending on the volume of traffic and the number of crews required.

Q. If legislation such as you propose was enacted do you not think there would be a great deal of disagreement as to what was or what was not a partial abandonment or closing?

A. Well, as a result of potential changes contemplated by the Canadian National-Canadian Pacific Act which

which you referred to this morning, a measuring stick was set up in that Amendment by which to determine many of these things; and they determined the compensation according to the years of service and what have you; they determined/^{it}through a committee and a board.

A. Don't you think that the railway employees now have pretty adequate protection?

A. I think, sir, the best evidence I could give to you and to the Commission in support of our request for an extension or amendment to Section 179 can be found in the Canadian National-Canadian Pacific Act which you cited this morning, wherein it goes farther than we request or suggest 179 should go.

I think you will find in the amendment to the Canadian National- Canadian Pacific Act assented to on June 3, 1939, that it provides, notwithstanding the provisions of Section 179 of the Railway Act, which relate to compensation of employees, for financial losses caused to them by removal, closing, or abandonment of any railway station or divisional point, any employee who is continued in employment and who is required by the employing company to change his place of residence, as a direct result of any such measure, plan, or arrangement, shall be compensated by the National railways or the Pacific railways, as the case may be, in whose service he is employed, one: for all reasonable travelling and moving expenses of such employee and his family, and for working time lost as a consequence thereof.

I submit, sir, that we do not ask for any such thing in the extension of 179 that we propose.

This covers travelling expenses necessary to the moving; it covers working time lost for the employee,

and it also covers for financial loss suffered in the sale of his home for less than its fair value; and in which case, the fair value of the home in question shall be determined as of a date sufficiently prior to the measure, plan, or arrangement, to be unaffected thereby.

I submit that this Canadian National-Canadian Pacific Act amendment governs conditions, only conditions created by co-operative arrangement between the two railways. It does not govern what might be practised by one railway individually.

Q. There is no argument about that.

A. The point I would make clear is that this amendment enacted in 1939, which alters section 179, as originally enacted, and it goes much farther in compensation to employees than we are asking the extension of 179 to go.

And if it can be determined, and was decided as indicated by this amendment in the one set of circumstances, we submit that it is further justification for the request we make in submitting our proposed amendment to 179.

Q. In 1935 you submitted to Parliament an amendment which was exactly the one you are now submitting to this Commission, and it was refused.

Q. Is that correct?

A. That is correct.

COMMISSIONER INNIS: What were the grounds of refusal?

MR. SINGLAIR: The only ground I can suggest was: that it was not justified.

THE WITNESS: I do not think, sir, that that is an entirely satisfactory answer.

We have, almost annually, made certain proposals to parliament in respect to proposed legislative

amendments. Many of them are not acted upon for various reasons.

Possibly their programme has been set, and they decide they do not care to vary from it.

Other considerations might be given: that were our request to be granted, it would influence or affect others.

I do not think it is fair to say that the fact that our requests were not met indicates that they were not justified.

MR. SINCLAIR: Q. In any event, you did not succeed in having the Government introduce legislation, or have the legislation favourably considered in the house?

A. We did not succeed.

Q. In regard to clearance, Mr. Kelly, I think you told us yesterday, that the matter of clearance, side clearance, was now before the Board of Transport Commissioners?

A. One phase of it, sir, that respecting parallel yard tracks, and receiving, switching, and delivery tracks. One phase only has been the subject of an inquiry, or is to be the subject of a hearing by the Board of Transport Commissioners.

Q. But you would agree that under the existing legislation in the Railway Act, the Board has full power to deal with matters of clearances of all types?

A. That is true. But we do not agree that it is entirely proper and satisfactory, because the number of exceptions that are granted by the Board to structures and track centres and what have you, of laws governing standard clearance, are so numerous that they are not

affording the protection that would be afforded, were the law more specific.

Q. In other words, you do not happen to agree with certain of the judgments or orders of the Board of Transport Commissioners?

A. That is quite correct.

MR. SINCLAIR: The section, my lord, which gives jurisdiction to the Board, I would like to put on the record. Regarding the safety towards employees, it is 287.

THE CHAIRMAN: I think this brief refers to Section 250.

MR. SINCLAIR: Yes. That is a specific section; but I am dealing with the general jurisdiction of the Board.

THE CHAIRMAN: I see. Yes.

MR. SINCLAIR: Regarding safety, that is to be found - it is section 287 (1) of the Railway Act.

It is extremely broad in its language; and it reads as follows:

"287. The Board may make orders and regulations (1)generally providing for the protection of property, and the protection, safety, accommodation and comfort of the public, and of the employees of the company, in the running and operating of trains and the speed thereof, or the use of engines, by the company on or in connection with the railway."

THE CHAIRMAN: But then, there is Section 250 which deals with the broad topic of clearance, headway over cars, headway clearance and sideway clearance. You would have to read that section by itself?

MR. SINCLAIR: I think, my lord, that the general section is the one I was dealing with, in regard to side clearance. I am going to deal with overhead clearances under Section 250.

THE CHAIRMAN: Yes, that is the section referred to in this brief.

MR. SINCLAIR: Yes . That deals with overhead clearances, as specified.

THE CHAIRMAN: And the side clearances too, does it not?

MR. SINCLAIR: My lord, side clearances?

THE CHAIRMAN: The topic of side clearances is dealt with in this brief and it refers to Section 250..

MR. SINCLAIR: But section 250 deals with overhead clearances, not side clearances, which would come under the general section, which I have just given to your lordship.

THE CHAIRMAN: Yes, I see. The brief later on says:

"Unfortunately Section 250 fails to protect against restricted side clearance which has created hazards of even greater importance because of the ^{much} more numerous cases to be found."

You would say that side clearance is left to the general section, which is 287?

MR. SINCLAIR: Q. I am correct, am I not, Mr. Kelly, that there is only one state in the United States which prescribes clearance above the rail in excess of 22 feet, 6 inches?

A. I cannot answer that, because, I understand that in the United States, each state has its own clearance laws. They are not a federal jurisdiction; there is not the federal authority over the matter as

there is in our Canadian setup.

Q. But in the United States, where there is a great deal of railway transportation, and a great number of railway employees, there is only one state, California, which requires that the overhead distance, that the distance between the rail and overhead structure could exceed 22 feet 6 inches, and that state has 23 feet.

THE CHAIRMAN: I think they said yesterday that they were not very much interested in that particular distance, and what they want is the clearance above the top of the car.

According to the evidence, one cuts into the other, and sometimes head clearance is reduced below 7 feet by the size of the car, the vertical size of the car.

MR. SINCLAIR: That is right, my lord.

THE CHAIRMAN: Is there any objection to having simply specified that overhead clearance, let us say, in all cases, be seven feet above the highest car on the railway? That is what you said yesterday, did you not, Mr. Kelly?

THE WITNESS: It is already in the Act, Mr. Chairman. There is a seven foot provision above the height of the highest car in use on the railway; that is already specified in the Act.

THE CHAIRMAN: Wouldn't that provision be sufficient, or is there some reason why there should be the two provisions, with the one, possibly, eating into the other?

MR. SINCLAIR: My instructions, my lord, are, that the engineers of the company consider that twenty-two feet six inches from the rail is all that is required and that it adequately protects the employees working on

the railway.

THE CHAIRMAN: Does that mean that it does reduce the seven foot part of the section?

MR. SINCLAIR: It could reduce it, my lord.

COMMISSIONER INNIS: By how much?

MR. SINCLAIR: I think the highest box^{car} on the railroad would be fourteen feet; and that would leave eight feet six inches; and from that would have to be deducted, of course, the height of the rail, which is one foot and three-quarters inches. But I am not quite sure. Maybe Mr. Kelly could tell me.

THE WITNESS: Depending on the weight of rail; I think you will find some of them are closer to four inches.

MR. SINCLAIR: Let us say four inches.

COMMISSIONER INNIS: Q. You have not got anything more specific than that?

A. No. You could get that from the Directory of Equipment. It would not be difficult to get it.

Our point is that no one can determine, in feet and inches, the amount of clearance that would be left between the top of a car and the structure, until there is some maximum limitation placed upon the dimensions of the car, because they are constantly being built larger and higher. So we believe that where a more definite programme is followed by the operation of the Act, it would leave a seven foot clear head room above the top of the highest car.

MR. SINCLAIR: Have you experienced any difficulty in maintaining the two clearances now?

A. We have many of them that are restricted. Speaking of vertical clearances, we have many restricted

vertical clearance that are permitted by the authority given to the Board under the Act, to examine, on application, certain structures or certain conditions.

And what actually happens is; the Board requires the railway to put up a warning sign; and it simply means that the hazard is there; and if a man fails to see the warning sign, he is into a hazardous position, because of lack of clearance.

Q. But the Board of Transport Commissioners have an engineering staff, an expert, who is moving across the railway, and who is charged with the duty of seeing that safety practices are carried out?

A. That is correct, insofar as his duties are concerned. But then we find that the engineering department, and director of engineering can approve less than the standard clearance with absolutely - I think it is fair to say absolutely - no, with intimate knowledge, at least, of the conditions under which our men have to operate, who are on top of those cars.

Q. But you can make representations to the Board?

A. Here is the best sample I know of. In June, 1921, in respect to clearances, particularly side clearances.

Q. We have dealt with that point before. Now we are dealing with overhead clearances.

A. You say: can we not make representations to the Board?

Representation was made to the Board in June, I think, 1921; and from that came an Order of the Board, effective January 1st, 1922 that has absolutely no application to any tracks constructed prior to that date. They are all in service today, and we have got no relief.

Q. That is, track centres. If you don't mind, would you allow me to proceed to deal with overhead clearances.

What you are asking the Commission^{to} recommend is: that by legislation they tie the hands of the discretion that is now vested in the Board and their expert staff.

A. We are not satisfied that the right vested in the Board to except from application a certain specified safe clearances is full protection for our men.

Q. Your answer to my question then is: yes?

A. That we are not satisfied.

Q. That you are trying to tie the hands of the discretion which is vested in the Board of Transport Commissioners and their technical staff?

A. To the extent that they should be guided by - like that safe clearance.

Q. So you don't want to answer my question yes or no?

A. Now, I am not just sure what the next one may be.

Q. Don't worry about that.

A. I have not committed any offence to be placed on trial, and I am going to simply guard myself against being tricked into something that I do not agree with.

Q. I won't trick you!

A. I hope you won't.

Q. I couldn't.

Now, with regard, Mr. Kelly, to your submission of Section 267, the signboards at level crossings, you suggest that illuminated Scotchlite signs be placed on each side of the crossing instead of on one side, as now required by the act.

Do you not consider that if adequate side lines are maintained at level crossings, that there is no excuse for vehicles, or rather for vehicle drivers not seeing a train approaching the crossing?

A. Our whole thought in this case is that we are anxious to afford protection.

If the single cross-buck, as sometimes it is termed, an ordinary sign - we cannot convince ourselves that anyone driving who is about to approach the crossing can see it if it is dark; and we believe that there should be signs on either side of the track.

And we further believe and recommend that, insofar as the Railway Act is concerned, and insofar as the Board is concerned, their jurisdiction ceases with the railway right-of-way.

We suggest that there should be signs on each side of the track if they are necessary.

(Page 7122 follows)

Q. Well, can you answer this, Mr. Kelly, and help me in this way? How do you think a man driving a car or wagon or whatever he may be driving is going to see a sign if he cannot see a train that is on the crossing?

A. Well, I can give you an instance from personal experience.

Q. They sometimes do not see trains and they hit the middle of trains, don't they?

A. That is so. Too many times the motorist strikes the side of a train.

Q. Then from the very fact that they do that, how is a sign going to be any greater warning?

A. We are suggesting there should be a reflectorized button or scotch light or something on those signs that his lights would pick up.

Q. I am trying to deal with the point that you want these signs on both sides of the track. We will come to the other point later.

A. Right.

Q. Can you suggest how they would see a sign easier than they would see a train on a crossing?

A. No.

THE CHAIRMAN: Well, the Act does provide for a sign.

MR. SINCLAIR: On one side, yes.

THE CHAIRMAN: Parliament must have thought it advisable to have a sign there, although as you say the motorists ought to see the train without a sign. It seems to me maybe this is the reason -- that the train is a great deal farther away from him than the sign would be if it is a moving train.

MR. SINCLAIR: Yes, on one side of the crossing, one side is sufficient except when a train is there blocking the view.

THE CHAIRMAN: The sign mentioned in the section of the Act simply says the words "Railway Crossing painted on this sign. Now that sign is visible on the one side of the track only, is it?

MR. SINCLAIR: Quite so, my lord.

THE CHAIRMAN: What reason is there against them putting it on both sides?

MR. SINCLAIR: Well, I say it would serve no useful purpose.

THE CHAIRMAN: You say it would serve no useful purpose at all?

MR. SINCLAIR: Oh, no.

THE CHAIRMAN: I thought you said a man ought to see a train. He should not need a sign.

MR. SINCLAIR: My lord, I was saying if adequate side lights were maintained there was no excuse for motorists not seeing a train.

THE CHAIRMAN: Then Mr. Kelly, you say there is an inadequacy because the sign is only at one side.

MR. SINCLAIR: But that inadequacy can only arise if a train is on the crossing to block him from seeing it if the sign is on the other side of the track.

THE CHAIRMAN: You mean the motorist can see the sign whichever side of the crossing he is on?

MR. SINCLAIR: As long as there is not a train blocking his view. My question was if he could not see the train.

THE CHAIRMAN: You mean the trains are there in front of him?

MR. SINCLAIR: Yes, that would be the only time for a necessity for a sign on both sides of the track.

THE CHAIRMAN: What do you say to that?

THE WITNESS: My suggestion is that if he cannot see the train, he cannot see the sign but I am wondering

what purpose the sign serves if the train is going to be visible?

Q. No, but if the train is not there although there is a train coming can't the motorist see that sign from the other side of the track?

A. That is true, sir, and it should be sufficient warning that there is a crossing at that point.

Q. But you say it is not sufficient because you want two signs, one on each side?

A. What we were thinking of, sir, was the protection that could be afforded by the reflectorized sign on each side of the track. His light would strike the reflectorized sign. There would be nothing on the passing train to be picked up by his light. No reflectorized buttons or fabric on the side of the train. He would pick up the reflectorized buttons or fabric on the sign and many many cases have happened where the motorist crashes into the side of the train when it is moving across the crossing.

MR. SINCLAIR: Maybe a simpler way to solve the whole thing would be to have legislation which made all motorists stop before crossing railway tracks?

A. I think we are doing better than that in most provinces, sir, because they are setting them back some three hundred feet from the crossing on the highway. It is a warning sign which gives a man a warning of the approach to the crossing.

Q. Is that a reflectory sign?

A. Some of them are and I believe some provinces are extending to reflectorization of them as rapidly as they think their appropriations or conditions will permit.

Q. Maybe that is the answer to the whole problem.

A. We think it has been a great help where the installations have been made. It is a great help to much-travelled highways where motor traffic is heavy.

THE CHAIRMAN: Anybody else? That is all, Mr. Kelly, thank you.

MR. COVERT: Mr. Chairman, Mr. Campbell asked for permission to make a statement in respect of some evidence.

THE CHAIRMAN: All right, Mr. Campbell.

MR. CAMPBELL: Mr. Chairman, this is in respect of a statement in yesterday's record at page 6848. It has reference to the first paragraph in the Prince Edward Island brief at page 59 where the following occurs:

"It is noted that the Canadian National Railway Company operating the ferry service for the Department of Transport charges itself, and credits the car-ferry account for the use of the ferries in the transportation of its freight cars, one cent per ton mile on a minimum mileage of ten miles. The weight is taken from the Bill of Lading and no charge is made for the weight of the car itself. The charge therefore for a freight car loaded with twenty tons of freight would be two dollars. Empty freight, baggage, passenger and express are ferried back and forth free of charge."

Now at Page 6848 of yesterday's record near the top of the page:

"MR. O'DONNELL: All I was trying to refute, Mr. Chairman, was the inference that the Canadian National's cars are being carried back and forth free of charge. I simply say that is not the fact. . ."

and about the middle of the page:

THE CHAIRMAN: The ferry does not carry your empties free?

MR. O'DONNELL: No; that is the whole point, and that was the inference I was endeavouring to refute."

Now I wish to tender in evidence (I may say this is only a copy; the original, I presume, is in that box which is still on its way somewhere from Prince Edward Island). I have here a copy. It is headed:

"CANADIAN NATIONAL RAILWAYS

The Royal Commission on Transportation

Information required by Mr. J.O.C. Campbell, Treasury Counsel, Provincial Treasurer, P.E.I.

1. Q. Does the Canadian National Railway, in its operation of the car ferry between Borden and Tormentine for the Department of Transport, charge itself, qua railway one cent per ton mile for freight carried on the car ferry in railway cars?
A. Yes.
2. Q. Is the mileage figured at ten miles, and is the weight of freight calculated as per Bill of Lading?
A. Mileage is figure at 10.42 miles and weight of freight is in accordance with Waybill.
3. Q. Is any charge made for the carriage of the freight car itself, or for the carriage of empty freight cars?
A. No.
4. Q. What were the cash receipts at each railway station in Prince Edward Island in the year 1948, on account of --
(A) freight collections
(B) passenger fares?
A. Statement attached.

EXHIBIT NO. 102: Filed by Mr. Campbell; letter from C.N.R.
to Mr. Campbell as
above.

MR. O'DONNELL: That does not necessarily affect the
statement we made as to the allowances being made.

THE CHAIRMAN: You say it does not affect the
statement you make concerning that?

MR. O'DONNELL: The charge refers to the hauling of
the cars and the return of the car if empty if required
so to do, and we will bring information later to clarify the
situation and more than may be needed.

MR. COVERT: Now, Mr. Chairman, Mr. F. D. Smith, K.C.,
is, I think presenting two witnesses that you will find
named in the agenda under the Transportation Commission of
the Maritime Board of Trade. The reason for calling them
now preceding Mr. Matheson is that they are here and they
want to finish and go home.

MR. F. D. SMITH: Mr. Chairman, the first witness I
will call is Mr. Fisher.

MR. C. M. P. FISHER called

EXAMINED BY MR. F. D. SMITH, K.C.

Q. What is your occupation, Mr. Fisher?

A. Manufacturer.

Q. With what company are you connected?

A. Enterprise Foundry Company of Sackville.

Q. And what is your position with that Company?

A. Vice-President.

Q. How long have you been in the business of
manufacturing stoves?

A. You mean personally?

Q. Yes.

Q. Thirty-seven years.

Q. Perhaps you could tell the Commission how many
men are employed at your foundry?

A. Approximately three hundred -- may run a little more or a little less. That is in the plant itself, not the office.

Q. And what are your products?

A. Our products consist of heating and cooking equipment for coal, wood, electricity and gas.

Q. And where is your market?

A. Our market is in Canada from coast to coast.

Q. Now, Mr. Fisher, you wrote a letter to Mr. Rand Matheson, the Transportation Manager of the Maritime Transportation Commission, I think on December 12, 1948?

A. Yes.

Q. And that letter appears at pages 118 and 119 of Part 1 of Volume 1 of the submission of the Transportation Commission?

A. Yes.

Q. Now, would you please say if you affirm the statements made as well as the views expressed in that letter or if there any alterations or corrections which you wish to make in that letter?

THE CHAIRMAN: Would you give me the pages?

MR. F. D. SMITH: 117 and 118 of Volume 1, my lord.

THE WITNESS: 118 I think our letter is at.

THE CHAIRMAN: Yes, all right.

A. Yes, the extract here is in a letter I wrote to Mr. Matheson in reply to an inquiry from him as to our opinion in connection with the application for a twenty per cent increase in the freight rates. There is one figure which I notice I wish to correct on page 119. It is in the third paragraph. It reads: "2500". It should read "1500".

MR. F. D. SMITH: That is "annual consumption of 1500 tons? "

A. Yes, and in the following line it should read "9" instead of "15" -- "9,000" instead of "1500".

Q. That is in the third paragraph?

A. Yes.

Q. Apart from that change there are no corrections or alterations to be made in your statement contained in the letter?

A. That is right, Mr. Smith?

Q. Now, Mr. Fisher, will you tell the Commission something about the history of the stove industry in the Maritime Provinces. As I understand it at present there are two stove foundries in Sackville?

A. Yes.

Q. And do you know when the predecessors of these businesses started in business in Sackville?

A. Yes, Mr. Smith.

Q. You have committed some of your thoughts in this matter to writing and you can refer, with the permission of the Commission to the notes that are contained in your memorandum, and perhaps it would save time, Mr. Chairman, if I asked Mr. Fisher to read instead of putting ordinary questions and answers. I think it would save time. Mr. Fisher wants to get back to his home at the first opportunity.

MR. EVANS: Perhaps my friend will supply us with copies of that?

A. I am afraid this is just a copy of --

THE CHAIRMAN: Well, it will be transcribed if it is read.

MR. EVANS: My point is, Mr. Chairman, we have had no advance of a further brief, as it were?

MR. SMITH: This is not a brief.

MR. EVANS: At least I thought we might have had

something to fall in with in order that we might decide even on the spur of the moment what needed cross-examination and what did not.

THE CHAIRMAN: I think, Mr. Evans, you had better have it read and then, subject to whatever objections you may have to it --

MR. EVANS: I do not want to be said to object to it.

THE CHAIRMAN: Any exceptions or further opportunity to question. We will bear all that in mind.

MR. O'DONNELL: That is the difficulty I am in too, my lord, in that we were not given an agenda to indicate what Mr. Fisher was giving. Now I have no objection to his giving this story at this time --

THE CHAIRMAN: Now, Mr. Fisher is here and whether he gives us this information instead of questions by Mr. Smith or whether he reads it off does not make much difference.

MR. SMITH: I am doing it for the purpose of saving time.

THE CHAIRMAN: Yes, I know.

MR. O'DONNELL: I have no objection to that at all. All I am saying is that Mr. Fisher's industry and enterprise is a matter on which we should have had some information and data and it makes it a bit difficult to examine him with any definiteness.

THE CHAIRMAN: We will bear your difficulties in mind after he is through.

MR. SMITH: I might remind Your Lordship that at the time Mr. Matheson presented his brief for the Maritime Commission, it was mentioned that Mr. Fisher and Mr. French of the Enamel Heating Company were unable to be present at that time and that their evidence would be given at this sitting at the same time as the cross-examination of Mr. Matheson was to take place. But in so far as inconveniencing my friends is concerned, I think

that if there is anybody that should complain it is Mr. Matheson. He was in Halifax; he was taken off the stand, then he went to Fredericton, then he was in Charlottetown, and now he is in Ottawa.

THE CHAIRMAN: That is not Mr. O'Donnell's fault or Mr. Evan's fault; that is another thing. However, if as you say the indications were given at a previous sitting that these gentlemen were being called, then nobody is being taken by surprise. A transcript of all these proceedings is available to everybody. You had better read it.

THE WITNESS: Yes, sir.

A. The two Sackville Foundries started in business in 1860 and 1872 in a very small way to make stoves for nearby counties. After some years, as business developed, the goods were sold throughout the Maritime Provinces.

In those times, the product manufactured was relatively simple and made almost entirely of cast iron which was brought in from Scotland and later iron made in Nova Scotia was used. Other supplies, which were chiefly molding sand and hard coal, which was then used for melting, came in by schooner to Sackville. As steel sheets came into use in stoves, they were imported from Great Britain through the ports of Saint John and Halifax. Shipments of the finished product went out from Sackville by rail and water.

With the changes in design and in types of cooking and heating equipment, many new materials and processes came into use. In Central Canada production had developed in pig iron and steel and in kindred supplies so that eventually the prices of these Canadian materials became more attractive than the prices of similar supplies from Great Britain.

The tide had turned of the flow of supplies so that instead of it being from east to west, it was now from west to east as far as the Maritime foundries were concerned. As a result, the foundries in Ontario and Quebec were much nearer the source of supply of raw materials and, consequently, obtained them at a lower cost. This condition has continued.

In this era a distinct change took place in manufacturing techniques. The use of sheet steel increased and it became necessary to develop mass production methods, in order to function economically. Such methods called for what might be termed "mass production selling", so this meant looking for larger markets. Naturally we

turned to the markets of Quebec, Ontario and Western Canada.

Progress was made in developing business in Central Canada and Western Canada by intensive efforts but in the Western Canada market the results were, shall I say, on and off, not a steady building up. This situation continued for many years. Starting in the early 1920's better progress was made and a foothold obtained and on this, a good volume of steady business has been built up and with it the growth and expansion of our plant.

It is well to note here that the differential in freight rates to Winnipeg which had during and after the first war pyramided from 12 in 1912 so that in 1920 it was $24\frac{1}{2}\phi$ per hundred pounds was reduced on August 1, 1922 to 14ϕ and on July 1, 1927 to 6ϕ and it remained at this figure until the 21% increase in April, 1948. It is now 8ϕ on the way up again.

The great growth in population and business activity had taken place west of the Maritimes and our business has grown with it so that in order to maintain our operations, this market is essential to us as it now takes the largest part of our production. This is, of course, only natural when one considers that the population of the Maritime Provinces is only approximately $1/12$ of Canada and as such, offers only a small market even when intensely worked.

In a growing country like Canada a manufacturing business, in fact in any business, cannot remain stationary. It is either go ahead to success or go behind to failure. These foundries have built up a good, sound trade in these markets west of the Maritimes and if given a fair break hope to be able to maintain and expand these markets.

When I first came with our firm, there were 11

foundries in the Maritime Provinces producing stoves. There are now 5. Two of these are rather local, in fact, one hardly makes any stoves at all. In other parts of Canada, new manufacturers of stoves have opened up and prospered.

During the last eight years, stoves have been in short supply - a seller's market - and due to this condition, some expenses have been able to be eliminated and added expenses have been able to be taken care of on account of maximum production and full and continuous use of all plant and equipment. This has been a far above average period and should not be considered as normal. About a year ago a change commenced to show and we are now moving into a buyer's market with much keener competition. Indications are that this will continue and become more and more pronounced so that every expense will have to be carefully analyzed and economies made if we are to meet successfully, the conditions ahead.

Let us compare a plant in Ontario with one of the same size in New Brunswick. Most of the raw materials used by stove manufacturers are produced in Ontario and Central United States. As a result, the freight cost to the Ontario foundry is small. The Ontario foundry has a large, wealthy home market. A market which can be worked at a minimum of expense and small freight distribution cost. They have overnight pick up and delivery service. On the other hand, the New Brunswick plant has to pay heavy freight bills on incoming materials. It has a small home market with a lower per capita purchasing power. Its nearest large market is at a minimum distance of several hundred miles. Such a brief comparison shows without doubt that the manufacturing costs of the New Brunswick plant will be much higher than the Ontario plant as

there are no compensating advantages.

Let us consider this from the railway's point of view. A Maritime plant gives the railway a long haul in on heavy tonnage raw materials, then a long haul out on the largest part of the manufactured product. The C.N.R. gets all the business - no road transport. The railway haul from Hamilton to Sackville is about 1100 miles. On the other hand, we have the Ontario plant, say in Toronto, with a raw material haul of about 40 miles and a large part of their out-going finished product going by road transport. Which is the better customer of the railway? Which should the railway give full consideration to from their own point of view?

Sackville is a very profitable station for the C.N.R. and has been for many years.

There are only a few firms in the Maritime Provinces that do a national business. These firms the people of the maritimes are proud of because they have built up their position against big odds or one could say in spite of big odds against them.

Consider a moment the past history of industry in the Maritime Provinces - it is not pleasant. I well remember a very hustling town not far from Sackville which in the years around 1912 had built up a number of thriving industries. A woolen mill, a piano factory, 9 railway car manufacturing plants, wood working factories, a rolling mill, an automobile factory, boot and shoe factory and several others.

Almost everyone of these industries died as they could not meet competition in the National market and the Maritime market could not begin to consume their production.

(Page 7140 follows)

Not only were these active industries out of business with the resultant loss of employment and population but what became of their plants. Buildings were even torn down, others were given up to decay as they had no market value whatever. These properties in industrial Ontario towns would at least have had some monetary value. This same condition has happened in other towns and cities in the Maritime Provinces. It is not something that we like to dwell on but it is a fact we cannot ignore.

Let us consider some actual freight rates. In 1912 the differential between Toronto and Winnipeg and between Sackville and Winnipeg was 12¢. Then this advanced due to percentage increases so that in 1920 it was 24½¢. This matter of percentage and other increase was taken before various hearings of the Board of Transport Commissioners which resulted in this differential being reduced to 14¢ in August, 1922. Then, as a result of the Royal Commission under the chairmanship of Sir Andrew Rae Duncan this differential was further reduced to 6¢ in 1927.

These reductions surely were only made after much research and consideration of all the facts. These facts today are stronger and more important than they were in 1922 and 1927. In those years the reduction was made to give industries in the Maritime Provinces an opportunity to get into the markets of Quebec, Ontario, and Western Canada. Today, we are established in these markets but by the action of the railways in putting into effect the percentage increase in freight rates on both the raw material and the finished product it would seem that we are very likely to be pushed out of this market again.

This horizontal or percentage increase is not just

a concern of firms doing business. It is of vital current interest to everyone in the Maritimes and is a steady and continual topic of discussion in trade, community, and government circles. Public opinion is very much aroused.

Let us consider just one outgoing rate. The long haul from Sackville to Vancouver. From April 8 1948, to August 1, 1949, the Sackville-Vancouver rate on stoves has been increased 92¢ per hundred pounds or 46.6%. The rate from Toronto to Vancouver has been increased 77¢ or 39%. That is, Toronto 77¢ increase against Sackville 92¢ increase. Toronto increase 39%, Sackville increase 46.6%.

Mr. Chairman, we realize that the railways need more net revenue and we do not oppose their obtaining some of this by increased freight rates but we do oppose the method that has been adopted. Namely, the percentage increase.

I do hope that as a result of this Royal Commission that the increases made since April, 1948 will be cancelled and in place of them that the increases will be such that they maintain the differentials or the differences in cents per hundred pounds which were in effect prior to April, 1948 when the 21% increase went into effect both on west to east movements of our raw materials and on the east to west movements of our finished product as compared with the other freight zones.

We realize that we will always be under a handicap as compared with our competition in Central Canada but we ask that this handicap be not more, as far as freight rates go, than it was prior to

April, 1948. Such a condition would give great encouragement and help to us, to overcome the many obstacles of competition in these large and vitally important markets.

(Page 7145 follows)

MR F. D. SMITH: That is all.

THE CHAIRMAN: Now does anybody wish to question Mr. Fisher?

MR EVANS: I have a few questions, Mr. Chairman, if I may.

THE CHAIRMAN: Yes, go ahead.

CROSS-EXAMINED BY MR EVANS:

Q. Mr. Fisher, if my recollection is correct, you presented a brief in much the same terms to the Board of Transport Commissioners in the so-called 21% case?

A. Yes.

Q. And will you see if my recollection is right? There were no substantial differences in the position you now take from the position you then took?

A. I believe then that we said -- that was at the start -- that there should not be any increase in freight rates. We have said here to-day that we realize the railways need more revenue and that they should be obtained from freight rates, but on a different basis.

Q. You do not suggest what basis?

A. I suggest, yes, an increase in cents per hundred pounds rather than a broad percentage increase.

Q. And have you considered where the maximum in cents per hundred pounds will be fixed in relation to distance, or have you any views on that?

A. No; I think that there are so many traffic men who can work that out to so much better advantage.

Q. Well, at least you have no views to present here on it?

A. No, no views to present here on it.

Q. Now, you used the term "differential", Mr. Fisher; did you by any chance mean arbitrary?

A. No -- well, I don't know just what you mean by

arbitrary; perhaps it is. It is this way: The rate from Sackville to Winnipeg is \$1.20, we will say \$1.20; the rate from Toronto zone to Winnipeg was \$1.14. There was 6 cents difference. We refer to that as a differential; perhaps it is an arbitrary.

Q. May I suggest, to clear it up, that the rate to Winnipeg would consist of what we call three factors: there would be the rate from Winnipeg to Fort William or Fort William to Winnipeg, depending on which way you are going, there would be the so-called arbitrary east of Fort William to and including Montreal, and the so-called maritime arbitrary over the Montreal?

A. Yes.

Q. And, in order to get the record straight, I suggest that perhaps we would both understand it a little better if we used the word "arbitrary" rather than "differential".

A. Right.

Q. When we speak of differential, as I understand it -- and I want to get this clear -- as I understand the use of the word "differential" it generally relates to the sort of flat difference that has existed say between the lake-and-rail rates and the all-rail rates, and so on; is that your understanding?

A. Well, I don't know; I haven't dealt with the lake-and-rail and so on.

Q. But, at all events, when you were talking about differentials you were referring to what we call arbitraries?

A. Apparently; I have explained what it is.

Q. Now, do I understand you to give the impression -- in fact, I think you do give the impression and do I understand that this is your considered view that the time has passed when increased costs can be added to the selling price?

A. Yes, that is the view, that the time has passed when increased costs can be added to the selling price. I noticed that just the day before yesterday the Dominion Bureau of Statistics announced that wholesale prices are on the decline, and had been ever since the first of this year.

Q. You are making this statement not generally but as to stoves?

A. We are making it as to stoves, yes. We feel that the market is such and conditions are such that prices should not be increased. It would be a great disappointment if we would be forced into increases.

Q. It is a very different statement, Mr. Fisher, to say that it would be a disappointment and to say, as you do in this letter, at page 118 of the brief of the Maritime Commission, that the time has passed when increased costs can be added.

A. Yes, increased costs that can be added -- by that I mean that increased selling prices would be put into effect, that increased costs could be added to the selling price.

Q. You are stating your opinion to be that no more can the selling price of stoves be increased by increased costs?

A. That is my opinion.

Q. That goes on into the indefinite future?

A. We cannot look too far into the future; we can only hope for the best.

Q. If you had to make a wage increase to-morrow, Mr. Fisher, would you still say that you could not add a dollar to the price of your stoves?

A. The market is such that it would be very unfortunate if a dollar had to be added on. We would not want to add on

a dollar if there was any possible way it could be avoided.

Q. Well, are you prepared to state your opinion as a business man that no more can you ever add a dollar to the price of your stoves?

A. No, I would not make any such broad statement as that. No person could.

Q. But that is the statement you do make, is it not?

A. No.

Q. In the brief of the Maritime Commission?

A. The time has passed when increased costs can be added to the selling price -- yes, that is an opinion expressed, and that is the opinion we have, that they cannot be added, from what we can see of conditions relative as they are to-day. We can't tell; something else may turn around completely to change that opinion.

Q. Now, would you tell me, over the past ten years how much percentagewise the retail price of your stoves has increased? Just give me a general figure.

A. No, I could not give you that figure, Mr. Evans.

Q. Would it have doubled?

A. Oh, no.

Q. It would not have doubled?

A. No; I would say no. I feel confident that it has not doubled.

Q. How about your factory price?

A. The same thing would apply.

Q. Well, can you not say whether or not it has doubled in the past ten years?

A. I would say that it has not doubled.

Q. You would say that it has not doubled?

A. Yes.

Q. Would it be far short of double?

A. I wouldn't say that. I wouldn't throw my mind back that far, to speak with authority on it.

Q. Well, can't you give me some idea?

. No.

Q. Surely! You have been in this business for thirty-seven years; you could give me some idea of whether it was nearly double; I do not ask you to give it to me exactly.

A. No, I said that in my opinion it is not doubled or nearly doubled now.

Q. Or nearly doubled?

A. Yes; that is what my opinion is, without speaking from records.

Q. Now, you spoke of the advantage to the railways -- that is from the railway point of view -- of a long haul on the basic commodity, which in your case is ore?

A. No; ours is---

Q. Steel?

A. Steel sheets, pig iron, and a multitude of other things, coke and so forth.

Q. At all events, you felt that it would be in the railway's interest that they should have the long haul on those basic commodities to Sackville and the long haul on the finished product out?

A. We should think so.

Q. You would not care to qualify that to the extent that it would depend on the rate as to whether it was to the benefit of the railway?

A. Well, I would imagine the railways have set the rates so that the long haul is a better haul for them than the short haul. I am speaking as a layman with reference to transportation.

Q. Even as a layman, would you not agree with me

that a long haul -- and I am speaking of a long haul to the Maritimes and back as compared with a shorter haul in some other part of Canada -- would not the question as to whether it was to the advantage of the railways to carry that, the long haul, depend on whether they got compensatory rates or not?

A. I imagine that the cost per mile for a long haul is much lower than the cost per mile for a short haul.

Q. I would not dispute that with you, Mr. Fisher; but doesn't it in the last analysis depend upon whether a rate is adequate whether it is of advantage to carry traffic on it?

A. Naturally.

Q. Quite. Now, would you give me the present retail price of what I will leave to you to be a representative stove product of yours?

A. I am afraid I could not. We do not set retail prices at all.

Q. Then give me your factory price?

A. I could not name you offhand factory price. We have scores and scores of items.

Q. Would you like to pick out anything out of your catalogue, or the catalogue of your mind, that you would like to give me as a representative product of your plant?

A. No.

Q. Well, may I suggest to you a kitchen stove; give me the range of prices for a kitchen stove?

A. I could not give that information without the actual facts.

Q. Well, what does a kitchen stove weigh?

A. A kitchen stove will weigh anywhere from 300 to 500 pounds.

Q. Would a good average be 400 pounds?

A. Yes; 450, possibly.

Q. And what would a stove weighing about that bring you at Sackville?

A. I could not answer that; I would not speak from my mind.

Q. I do not want it to a dollar.

A. The stove prices would be quite a range, depending on the trim and the finish and the style and many things.

Q. Well, give me a rough range?

A. It might be anywhere from \$60 up.

Q. Up how far?

A. Well, it would be well up -- \$150, \$175.

Q. Would that be your top price?

A. I wouldn't say at all, I am afraid, Mr. Evans, because I have not got the specific information in my mind, and I do not want to make any statement that is not what I feel is correct.

Q. Now, how do you sell your products? Are they all sold f.o.b. Sackville?

A. No, not all sold f.o.b. Sackville.

Q. What is the general rule of thumb that applies to the sale of your products?

A. I wouldn't say there is any rule of thumb. It varies. Some stoves we allow the freight, other stoves are sold f.o.b. Sackville.

Q. That depends on your competition at the points of sale, does it?

A. It might be.

Q. Well, does it?

A. It might be; there would be various circumstances that have been built up that would govern it.

Q. Now, I suggest to you---

COMMISSIONER INNIS: I was just going to ask, Mr.

Evans, if you do not mind my interrupting, whether the extent of your f.o.b. sales has increased or decreased since the 15% increase, or since the 21% increase?

THE WITNESS: I do not believe it has changed; I do not think we have made any change in it.

MR EVANS: Q. I suggest to you that a stove weighing 500 pounds, destined to Winnipeg or points west of Montreal, based on the maritime arbitrary, pays only 40 cents for the haul from Sackville to Montreal?

A. You are dealing now with the freight on stoves going out. That is only a small part of the impact of this freight rate increase. We bring in very heavy tonnages of materials on which we pay freight. A good lot of that tonnage, quite a proportion of it, is consumable material, and there is the increased cost coming in that goes into the cost. You are dealing with a point only of the rate on a small item of 400 pounds going out, which naturally can be translated into a comparatively small figure, but that is not the picture.

Q. Could we come back to that? May I deal with the stove? I suggest to you that a 500-pound stove -- that is, shipping weight of 500 pounds -- paying the entire maritime arbitrary as it is now increased of 8 cents, is carried on the rails for 700 miles for 40 cents as part of the through rate?

A. Well, I do not know that.

Q. And I further suggest to you that the increase which took place in that arbitrary of 2 cents between the low of 6 and the present arbitrary of 8, makes a difference of 10 cents on that stove?

A. Mr. Evans, we are not looking just at to-day. We can look at to-day and last year to learn from it and get examples and get knowledge from it. We are looking ahead

to the future, five years, ten years, fifteen or twenty years; we feel we have got to take a long view in business. During the last two years, perhaps three years, there have been increases asked for of 30% and 20%. In two years' time is there going to be another 20%, in a few years' time another 30% or 40%? I am taking the long view of this in what I have said, and refer to the matter in general terms as percentage increases, that as they go on they will widen the gap. Now, how can a concern in the Maritime Provinces -- in New Brunswick, to be specific -- can you not see their relative position with a concern in Ontario that can buy its steel at we will say \$10 a ton less, their pig iron something similar, and so on? Is it reasonable to assume that we can manufacture goods any cheaper than they can or as cheaply as they can and pay those higher costs of our material?

Q. May I ask you the same question? Is it reasonable that the railway should carry your stoves and your raw material at an arbitrary over Montreal without any increase, for 700 miles? It is a very low arbitrary, you will admit. Now, is it reasonable in the railway's case any more than it is in your business, that they should be--

A. The railways have not made any increases. Say let them make them in cents per hundred pounds instead of these percentage increases, which widens the gap between us and our competitors in the central provinces.

Q. That is your view. Now, what proportion of the factory price of your stove is represented by labour costs?

A. I could not answer that, Mr. Evans.

Q. Have you no idea?

A. No, I haven't.

Q. Would it be 50%

A. I could not answer that.

Q. Then could you answer this: how do your labour costs in Sackville compare with your labour costs say in Ontario?

A. Our labour costs in Sackville are equally as high as in Ontario. They are higher than most, and almost as high as the highest in our industry.

Q. Are they as high proportionately to the purchase price, or are they higher or lower?

A. If your wages are the same as in Ontario, and our prices naturally have to be we will say relatively the same in order to compete with them there, then the relation would be the same.

Q. By what amounts or percentages or in any way you like to put it have your labour costs increased in the past ten years?

A. I am afraid I cannot give you that; I do not know.

Q. By what amounts or in what proportions have your material costs increased in the past ten years? -- and I do not ask you to the cent.

A. Well, I could not give you even approximately. We buy hundreds of different materials and items, but our purchase price -- let us come back again to the comparative basis, comparative system. Some years ago we enjoyed -- if that is the right term -- there was in effect in the Maritimes a lower wage rate than there was in Upper Canada. During the last moderate number of years that lower wage rate has disappeared, so that the rates now are the same in the Maritimes as in Ontario. We pay the same price and we buy our material from the same sources as our competitors in Ontario.

Q. You cannot use Nova Scotia steel?

A. No. There are no steel sheets made in Nova Scotia.

THE CHAIRMAN: Q. I beg your pardon?

A. There are no steel sheets made in Nova Scotia. They all have to come -- the nearest point is the Steel Company of Canada at Hamilton; the same with pig iron, and coke also has to come from Montreal.

MR EVANS; Q. Now, has your business been prospering in the past three or four years?

A. Yes, we have been getting along very well; it has been going ahead, I am happy to say.

Q. Are your sales increasing or decreasing at the present time?

A. The sales are slightly better.

Q. In numbers and in value?

A. Yes.

Q. As compared with prior years?

A. Yes.

Q. Has 1949 been your peak year of production?

A. We have not got quite to the end of the year yet.

Q. Well, so far?

A. It has been running very close to last year, being frank about it, being very close, just a little bit better. I think we have pointed out here that the stove industry was under control during the war, we were limited in our raw materials, and we were given a quota of what we could make -- "You can make so much of this and so much of that," and so on -- and as a result the demand in Canada got very much behind, and that backlog is now being used up, and sales resistance this last year has been very much greater; we have to go out and get it.

Q. Had the sales resistance gone up or the competition increased?

A. What's that again?

Q. Had the sales resistance increased or had competi-

tion increased?

A. Both.

Q. That is to say, your competitors are more active than they were?

A. Yes, I would say we have -- yes, we have more competition to-day than we did.

Q. Thank you, Mr. Fisher.

MR O'DONNELL: Might I ask a few questions, my lord?

CROSS-EXAMINED BY MR O'DONNELL:

Q. Mr. Fisher, I think you gave evidence in the 30% case, and we went in greater detail, I think, into some aspects of the business at that time; do you remember? There were fairly detailed questions and answers concerning your affairs?

A. A lot of questions.

Q. Well, I do not want to repeat that, but I just draw that to the attention of the Board. Now, you are the Vice-President and General Manager of this company?

A. Vice-President.

Q. Vice-President. And what is your particular sphere of activity in the company as such?

A. General administration, purchasing, a good deal of work in connection with production.

Q. And who handles the sales?

A. One of my brothers.

Q. Have you got a copy of your company's catalogue with you?

A. No, I have not.

Q. You have a catalogue?

A. We have a catalogue.

Q. Wherein you, I assume, put enticing pictures of fancy stoves and the prices at which they may be procured from your company?

A. Nice pictures of beautiful stoves.

Q. Would you be good enough to let us have one of those?

A. I would have to send it to you.

Q. Yes. I do not know, my lord, whether you could put an exhibit number on it at this stage, or whether we will wait till we get it.

THE CHAIRMAN: Better wait till you get it.

MR O'DONNELL : Then send us five copies, Mr. Fisher, if you would be good enough to do that, and I imagine the Commission would want five also.

(Page 7158 follows)

Q. You say you have been with the company for thirty-seven years, Mr. Fisher, and that to this date you employ about three hundred people. How many people were you employing, roughly, when you started with the company?

A. That is very hard to remember. I would say - and it is only a guess - 125. Put^{it} down as a guess.

Q. 125. Well it is more than double the number of employees has more than doubled since you went with the company?

A. Approximately.

Q. And I would imagine that the volume of business of the company has much more than doubled in the last 37 years?

A. Oh yes.

Q. Throughout those 37 years your company has prospered and grown?

A. That is one of the objectives of being in business.

Q. That is right. You are quite correct. And I think you told us that during the years when the Excess Profits Tax Act was in force, your company was in the excess Profits brackets. Do you remember that?

A. I think I said that at that time practically every company was in the Excess Profits bracket.

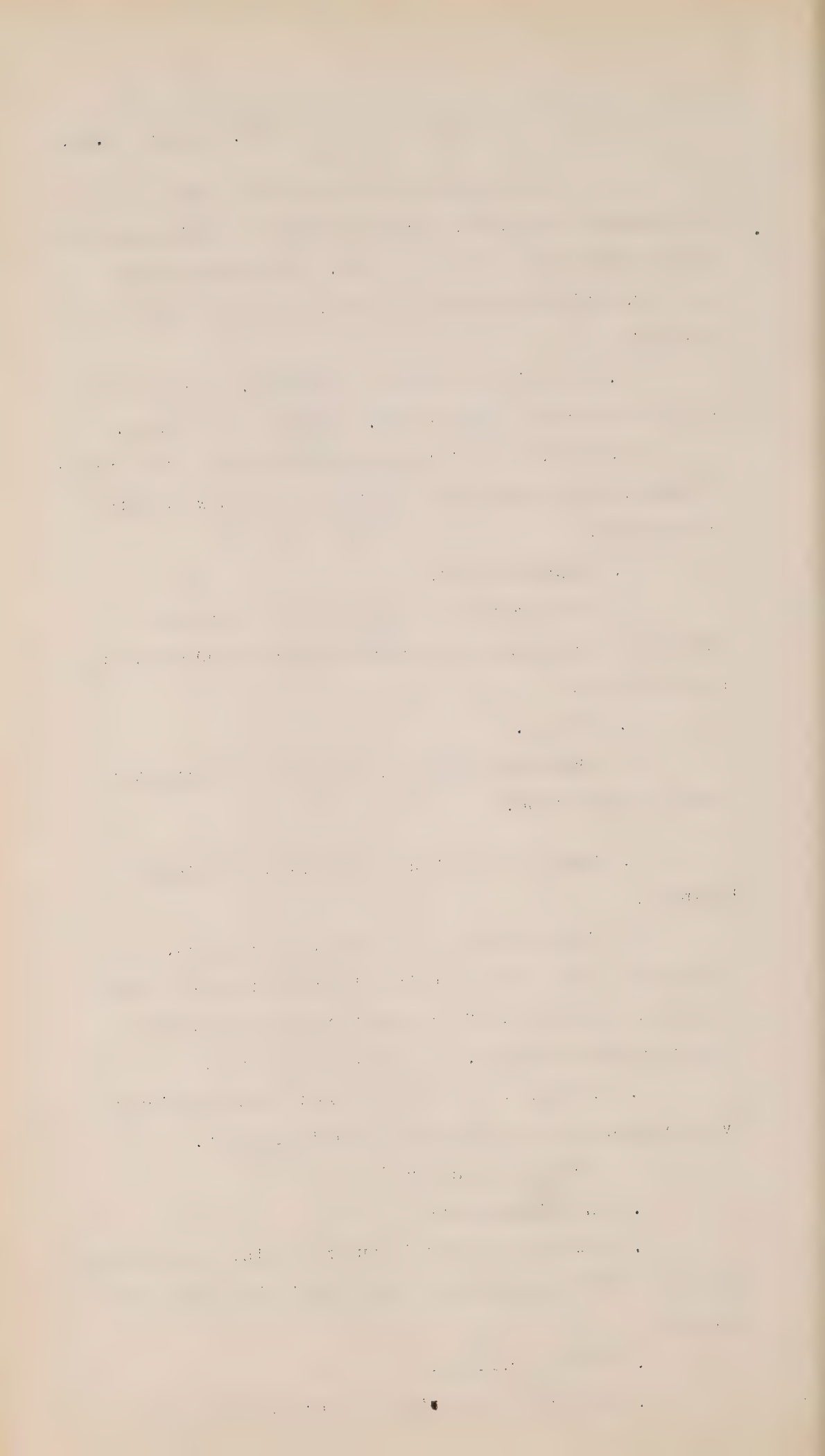
Q. Including your own?

A. Including my own.

Q. Now, your company's business, is, approximately 40% in the Maritime provinces, and 60% in the rest of the country.

A. That is correct.

Q. And in the Maritime Provinces, insofar as



freight is concerned, you enjoy all the benefits conferred, or the reduced rates conferred by the Maritime Freight Rates Act?

A. Yes.

Q. But your competitors do not enjoy that?

A. Yes.

Q. And is it fair to suggest that it makes it very difficult for any competition to get into the Maritimes?

A. No, not by any means. We have lots of competition from Ontario, in the Maritimes.

Q. And they can compete with you, and pay added freight, and still go down there and deal, competing in the Maritimes?

A. There are far more stoves and heating equipment manufactured in Ontario and sold in the Maritimes than are manufactured in the Maritimes and sold in Ontario.

Q. Do they undersell you? Does your competition undersell you, or what is the reason for it?

A. No. Selling is not all under-selling. It is in salesmanship, a lot of it. There are many lines. Those we are competing with are from wide-awake Ontario and Quebec firms.

Q. But your salesmanship in the Maritimes has never been known to be less worthy than that of the upper Canadians, as you put it?

A. You make me blush.

Q. In any event, you have 40% of your business in the Maritimes with the benefit of the Maritime Freight Rates Act, which is your benefit, insofar as shipments are made there.

MR. F.D. SMITH: On outgoing shipments only,
Mr. O'Donnell.

MR. O'DONNELL: Q. On outgoing shipments only.

Now, you said you were getting into a buyer's market. Your problem, in that respect, generally speaking, is no different from that of any other manufacturer today?

A. None whatever.

Q. You sell right across the country to British Columbia?

A. Yes.

Q. Have you warehouses or distributing points?

A. We have a warehouse in British Columbia, in Vancouver.

Q. And you are able to compete, I take it, satisfactorily, with the other vendors of stoves in the British Columbia market?

A. Yes. We have been able to hold our own there.

Q. What volume of business has your company done in the British Columbia market?

A. I could not tell you that. I have given the general distribution there.

Q. You cannot pick out one stove; no one stove that you would be satisfied was one of the principle lines that you manufacture and sell, and mention it at this point?

A. No. I could not give you specific figures on it.

Q. You do not know what the leader is? Has your company a leader line, or a specialty stove.

A. No.

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Q. The business is distributed generally, over how ^{many} models? You said that you made cooking stoves?

A. Over how many models, altogether, of the articles we manufactures?

Q. Basically, apart from the items that might be added here and there?

A. Basically, there would be a couple ^{of} dozen.

Q. Now, in that couple of dozen, there is no one, you would say, which is the one on which you do the bulk of your business?

A. No.

Q. Well, do you call them by names? For instance, one would be called the Monarch, another the Meteor, and so on?

A. Enterprise so and so and so and so; and some lines just go by numbers.

Q. Yes; and there is no number or name which stands out in your mind at the present time as being one of your principle lines, which you make a lot of?

A. No one, no. The variety is very extensive.

Q. So there is no one stove about which you can give the Commission information concerning the price, as compared with the price you mentioned, let us say, in 1938, as compared to 1949?

A. No, I haven't anything of that kind.

Q. And I suppose the same answer would apply to the other commodities you mentioneed, 1912 to 1927?

A. Stoves made in 1912 are not being made at all now. It is a completely different thing.

COMMISSIONER INNIS: Q. In your catalogue, do you quote price plus freight?

A. No. We have our catalogue; and in addition to that there are price lists, wholesale confidential

price lists for our dealers.

MR. O'DONNELL: Q. Your catalogue would not show price?

A. Not the catalogue, no.

Q. Would you have any objection, in order that the Commission may get some real idea of the effect of changes in freight rates upon your business - would you have any objection to having an investigator attend at your head office and look into your books and records, so that the Commission could see exactly what the effect of these freight rate increases has been, and see what the price was in 1938, and what it is today, and so on?

MR. F. D. SMITH: I think this very question arose in the Montreal hearings when Mr. Forsythe's evidence was given.

First of all, as I understood it, your lordship said the Commission was not investigating an individual company but was dealing with principles.

Now, all this witness has dealt with is the question of a horizontal increase and the impact and effect of a horizontal increase. Surely it should not be considered that it is a case where his business, and all the thousands of businesses in Canada should be subject to investigation?

THE CHAIRMAN: I think what happened in Montreal was this: that the company in question was complaining about discrimination in freight rates in favour of some of its competitors; and Mr. O'Donnell then began his interrogation to show what the situation was.

MR. F. D. SMITH: I think it was Mr. Sinclair Mr. Chairman, and not Mr. O'Donnell.

THE CHAIRMAN: Mr. Sinclair, was it? Yes, I think it was. And he began to question with a view

to showing that, in any case, the company was still manufacturing at its same plants in Nova Scotia.

Some companies might be rich while others might be very poor; but all were using the same railway and trying to find access to the same market; they would all have the right to the same freight. You could not charge the rich company more than you charge the poor company. The freight rate would have to apply to all. It should not be based on the shippers ability to pay, but on the service rendered by the transport company for the transport of goods, whether the shipper be rich or poor.

MR. O'DONNELL: I am merely trying to find what the effect of these changes have been on Mr. Fisher's business.

~~THE~~ THE CHAIRMAN: Mr. Fisher was saying that he apprehends that the effect on his business of recently increased freight rates will be detrimental. That is right, is it not?

MR. O'DONNELL: Yes, five, ten, fifteen years he says.

THE CHAIRMAN: Mr. O'Donnell wants to show that the freight rates, so far, have not affected his business detrimentally. Isn't that the idea?

MR. O'DONNELL: That is right. And the examination I had in mind would be: that the Commission, if it saw fit, could send someone there to satisfy itself. I am not asking for the information myself.

THE CHAIRMAN: You are suggesting that, perhaps, we ought to have such a thing?

MR. O'DONNELL: That the Commission satisfy itself. I am not asking for the information or that it would be made public.

THE WITNESS: I think that with respect to this information, if you consulted with Mr. French, one of our competitors in the same town - he is following me - I think he has some figures to submit which would take care of Mr. O'Donnell's question.

MR. O'DONNELL: All right.

THE CHAIRMAN: The question is: Is it fair? Mr. Fisher points out what it would cost people in Toronto to get to a certain market or elsewhere, and what it would cost him.

Now are these respective rates out of line? If they are, it does not matter whether one is rich and the other is poor. It is a question of fairness all round.

MR. O'DONNELL: And whether or not the change in the rate has had any adverse effect.

THE CHAIRMAN: Whether the increase in the rates creates an unfairness; and you suggest that we should go further into the affairs of this company. We will have to consider it.

MR. O'DONNELL: I am not asking for the information. I thought the Commission, if interested, would get it.

THE CHAIRMAN: We will bear that in mind, Mr. O'Donnell.

MR. O'DONNELL: Of course, Mr. Fisher may be somewhat reluctant to disclose to his competitors what his position is.

THE WITNESS: That is right. It is a private company and we do not publish any information.

THE CHAIRMAN: Mr. Fisher's prosperity may be due to some trade secret.

MR. O'DONNELL: Q. I understand that. But I also understand that in the last three or four years your sales volume has increased year by year?

A. Yes, a little, year by year.

Q. And it is higher today than it has been, through that policy?

A. That is right.

Q. And you hope it will get still higher?

A. That is what we keep on working for.

Q. At the present time, there are other manufacturers, in Carleton Place and Renfrew, Ontario?

A. Yes.

Q. That is some of your competition?

A. That is right.

Q. And you have got a benefit over them in the Montreal market, have you not, freight rate-wise?

A. I cannot say what the freight rate from Carleton Place to Montreal is.

Q. The freight rate from Carleton Place or Renfrew to Montreal is 45¢; while yours is 44¢ per 100 pounds.

A. You are speaking of carloads?

Q. Yes.

A. We have not been shipping carloads. I do not know what the carload rate to Montreal is. I think our shipments go in there L.C.L.

Q. The rate is 45¢ from Renfrew to Montreal and yours is 44¢.

THE CHAIRMAN: What is the distance?

MR. O'DONNELL: Q. The distance is quite considerable!

A. Forty-four cents seems pretty low. We have

been shipping there for a long time, but it seems -

MR. FRAWLEY: Is that the L.C.L.?

Mr. O'DONNELL: No.

MR. FRAWLEY: You have not got the L.C.L.

MR. O'DONNELL: And your distance from Montreal to Sackville is about 300 miles, roughly?

A. You would have it there. You would know that more accurately.

Q. And you get in there for 1¢ per 100 pounds less than the Carleton Place or Renfrew man does?

MR. FRAWLEY: What is the Renfrew distance. Have you got it there?

MR. O'DONNELL: Q. And to Toronto, your rate is 68¢ at the present time, per 100 pounds?

A. I do not know.

Q. Now you mention a Winnipeg rate, do you not, a Winnipeg rate on a carload from Sackville; and from the information I have it is \$1.57⁷/₈ hundred pounds.

A. I have not kept pace with the changes, Mr. O'Donnell.

Q. And from Carleton Place or Renfrew it is \$1.49?

A. Yes, there is an 8¢ difference.

Q. An 8¢ difference on 400 pounds, let us say?

A. Yes.

Q. That is 32¢ on a 400 pound stove?

A. Yes

Q. And the price of that stove would run around \$75?

A. Yes. But what about the increased cost in that stove? We have to pay the higher freight for materials coming in. You are overlooking that fact.

Q. Well, there is that aspect of it.

A. It is more than an aspect. It is more, very much more than that.

Q. But the Carleton Place man has to bring his material in as well. He is a long way from Hamilton; he is in the eastern end of Ontario?

A. That is right.

Q. And he has to haul his sheet metal quite a distance?

A. That is right.

Q. And when it comes to selling the finished product in Toronto you have 700 miles, or 900 miles more that your freight is hauled for 8¢ a hundred pounds extra; and on a 400 pound stove, that is, roughly, 32¢?

A. That is on stoves going out.

Q. And your stove would sell for around \$75, easily. So would that 32¢ make a considerable difference in the price of your stove?

A. I think, if you refer to what I said, I said that in comparison of our relative position, with our competitors in Ontario, in such a case you have got to take into consideration not merely what the company sends out, but the total operations in bringing in large quantities of material.

I think the next witness has some figures to give you which will deal with that quite fully.

Q. Well, in any event, through the years, your prosperity and growth has been, as you said, achieved under the freight rates which prevailed for some time; and it permitted you to ship right across the country and to compete effectively in British Columbia?

A. Yes.

Q. Now, with respect to your company's position, freight rate-wise, you made no appeal to the Board of

Transport Commissioners, after the 21% Judgment had been rendered, did you?

MR. F. D. SMITH: The Maritime Transportation Commission did, however.

MR. O'DONNELL: Q. I am speaking of his company, because the Chief Commissioner, in his Judgment, toward the close of the hearing in the 30% Case, suggested that if any individual manufacturer or shipper was affected adversely by a horizontal increase - of which you were complaining - that he might make representations concerning that, or it might make representations concerning its specific case. Now, you did not do that, did you?

A. We have worked through the Maritime Transportation Commission always.

MR. F. D. SMITH: The matter of horizontal increases is still in the hands of the Board of Transport Commissioners, in the 20% case.

MR. O'DONNELL: They confirmed the Judgment and increased it by 8%.

~~That is all, Mr. Fisher.~~

That is all. Thank you, Mr. Fisher.

CROSS EXAMINATION BY MR. FRAWLEY

MR. FRAWLEY: Q. Where do you effect distribution? Have you got warehouses in Canada?

A. We have only one, and it is in Vancouver.

Q. You have none, other than the one in Vancouver?

A. That's right.

Q. And what induced you to put one in Vancouver?

A. We got turned out of where we were, and then we got turned out of another place, and we could not find a home to go to. So we brought some property from the Canadian National Railways, and we built a small warehouse

in Vancouver.

Q. What persuaded you to establish a warehouse in Vancouver?

A. Well that is for British Columbia.

Q. Do you distribute back from British Columbia inland?

A. No, into British Columbia only.

Q. Do you have any sales in the Prairie Provinces?

A. Oh yes.

Q. Where?

A. We sell to a jobber.

Q. Do you have more than one jobber?

A. One jobber only.

Q. Where is he located?

A. In Winnipeg, Saskatoon, Regina, Calgary, Edmonton, and a number of smaller places, North Battleford, and so on.

Q. To put the question plainly as to the reason you have a warehouse, rather than another jobber in Vancouver - have freight rates anything to do with that?

A. No. I do not think so.

Q. You have what you call a differential to Winnipeg of 8¢; but that same differential applies to other destinations in Western Canada?

A. To all Western Canadian points I believe.

Q. So you pay, if you are shipping to your jobber in Calgary, you pay the rate from Montreal to Calgary, plus 8¢?

A. Yes; but what is that again?

Q. You said you had a differential, that Sackville had a differential over the rate from Montreal to Winnipeg of 8¢.

A. Yes.

Q. Now, I would ask you: does Sackville have a differential in the rate from Montreal to Calgary of 8¢?

A. It is the same thing. The differential is the same. We should call it an arbitrary, to all the Prairie points.

THE CHAIRMAN: It is still 8¢?

A. It is still 8¢.

MR. FRAWLEY: Q. It is still 8¢; and it is 8¢ to Vancouver?

A. No!

Q. Tell us about that.

A. To Vancouver - it has always been the same from Winnipeg to Vancouver as from Sackville to Vancouver. I should not say always but for a great many years. It is a competitive water rate.

Q. It is what? I did not catch that?

A. It was, I think - it probably ^{would} be put down as a water competition rate. It was the same rate from Sackville to Vancouver as Toronto to Vancouver.

But, since April 1948, there have been various increases to this.

There was a 21% increase. And then they added 15¢ to the Sackville rate, but they did not do that to the Toronto rate.

So now, instead of paying the same rate from Sackville to Toronto as from Toronto to Vancouver, we are now paying 15¢ more.

MR. O'DONNELL: Q. It is about 1200 miles further?

A. Yes.

MR. FRAWLEY: Q. Did you ever have any discussion with the traffic officers of the railway as to why the rate, which formerly was the same, Sackville to Vancouver

and Toronto to Vancouver, is now 15¢ more?

A. Yes.

Q. What did they tell you?

A. They just try to jolly you along. There was no specific - they said it was just changed, that is all.

Q. Did they tell you about the disappearance of the water competition from Sackville to Vancouver?

A. Not that I know of. I know that my brother spoke to one of the officials about it, and he was telling me about it.

I tried to get in touch with that official several times in recent weeks, before I came up here, but he and I were always ^{away} at the wrong time. So we never could get together.

Q. So your carload rates to all points in western Canada are 8¢ over those of your competitors?

A. Yes, except to British Columbia.

Q. And, whereas you had the same rate to British Columbia, you now pay 15¢ more?

A. Yes.

COMMISSIONER ANGUS: Q. I understood you to say that you took a long view, fifteen to twenty years ahead, and that you were rather frightened at the prospect of freight rates increasing?

A. Yes.

Q. Now, when you take that long view, do you think that your other costs are increasing or standing stationary?

A. No. They would go up too, in the same relationship as to our competitors.

If the price of steel goes up \$5 to our competitors, it goes up in the same way to us. But if the railway

mark up 20%, our competitors may go up \$1, and we may go up \$1.25. So the gap becomes greater; and they are a lot nearer Sault Ste Marie at Hamilton than we are down at Sackville. At the present time our steel costs us \$9.54 more than our competitors in Ontario purely on account of the freight. So, I say, looking ahead towards continued increases, it stretches that gap farther and farther.

Q. When you think of the increase in freight rates as part of the general increase in prices and costs, and everything?

A. Yes.

Q. And if that takes place, must there there not be some increase in freight rates?

A. Yes. I realize that we must have more revenue for freight, and for the increases for freight; but it is the method of making the increase, not on a percentage basis but on a cents per hundred pounds, so that the gap does not get too great.

Q. When you spoke, in your brief, of the railways needing more revenue, I think you said they could get some of it from increased freight rates?

A. Yes.

Q. And where would they get the rest of it?

A. They can, probably, make economies, with greater efficiency.

That is what I tell our own people. Here, if this is costing us \$5, all right, perhaps we can get \$2.50. Can we hope to cut our costs and make greater savings with greater efficiency and economy?

Q. You would include savings in operation as increased revenue?

A. Oh yes. It lowers the cost, you see.

Q. But if you give me savings that way, then where would it come from?

A. That was merely a suggestion or idea that I tell to our own people in the plant, that they can always do better. I think we will all admit that.

COMMISSIONER INNIS; Q. Even the railways?

A. I think so, sir.

THE CHAIRMAN: Does anyone else wish to question Mr. Fisher?

Thank you, Mr. Fisher.

MR. COVERT: There is another witness but there is only about five minutes left.

MR. F. D. SMITH; Mr. Barry will be taking it. You had better ask Mr. Barry.

MR. BARRY: It would take half an hour at least.

THE CHAIRMAN: Then we had better wait until to-morrow,

MR. BARRY: He has all the information which, apparently, Mr. O'Donnell and Mr. Evans want. It would take at least half an hour, because he has a lot of the information which Mr. Fisher did not have.

THE CHAIRMAN: Very well then, we will adjourn until to-morrow morning.

(At 4.55 p.m. the Commission adjourned until
10.30 a.m. Friday, November 4th, 1949)

A.R.

Cause
ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

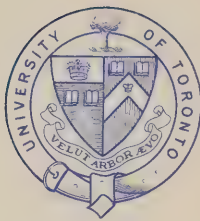
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ROYAL COMMISSION ON TRANSPORTATION

Index Page #55
Page

<u>A. R. FRENCH - Called. Examined by Mr. Barry</u> - - -	7174
Cross examined by Mr. Evans - - - - -	7179
Cross examined by Mr. O'Donnell - - - - -	7189
 MR. PHIL RUSSELL ROBINSON CALLED. Examined by Mr. C.W. Robinson, K.C. - - - - -	 7206
 <u>EXHIBIT No.103:</u> Filed by Mr. List of members Robinson. of Canadian Food Processors Association. - - - - -	 7207
Presented brief on behalf of Canadian Food Processors Association - - - - -	7208
 <u>W. R. CALDWELL - Called</u> - - - - -	7220
Examined by Mr. Robinson - - - - -	7221
 Noon adjournment - - - - -	7265
 <u>W. R. CALDWELL - Recalled. Examination resumed by</u> <u>Mr. Robinson</u> - - - - -	 7275
Cross examination by Mr. Evans - - - - -	7278
Cross examination by Mr. O'Donnell - - - - -	7283
Examined by Mr. Covert - - - - -	7287
 <u>RAND H. MATHESON - Recalled.</u> <u>Statement</u> - - - - -	 7290
 <u>EXHIBIT No.104:</u> Filed by Mr. Map showing distri- Matheson. bution of population in Canada in 1941	 7292
Cross examined by Mr. Sinclair - - - - -	7292
 <u>EXHIBIT No.105:</u> C.P.R. statement of class rates between Montreal, Toronto and specified points in the Maritime Provinces - - - - -	 7319
Adjournment - - - - -	7339

- - - - -

ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
Friday, November 4th, 1949

THE HONOURABLE W.F.A.TURGEON, K.C. LL.D. - CHAIRMAN
HAROLD ADAMS INNIS - COMMISSIONER
HENRY FORBES ANGUS - COMMISSIONER

- - - - -

G. R. Hunter, Secretary.
P. L. Belcourt, Asst.Secretary.

- - - - -

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H. C. Friel, K.C.		
F. C. S. Evans, K.C.	}	Canadian Pacific Railway
I. D. Sinclair		
J. J. Frawley, K.C.)	Province of Alberta
C. W. Brazier)	Province of British Columbia
F. D. Smith, K. C.)	Province of Nova Scotia Transportation Commission of the Maritime Board of Trade
J. Paul Barry)	Province of New Brunswick
J. O. C. Campbell, K.C.)	Province of Prince Edward Island
F. R. Hume	}	Canadian Automotive Transportation Association.
M. L. Rapoport		

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PHYSICS DEPARTMENT

REPORT OF THE PHYSICS DEPARTMENT

FOR THE YEAR 1954-55

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MORNING SESSION

Friday, November 4, 1949.

THE CHAIRMAN: Very well, Mr. Covert.

MR. COVERT: Mr. Chairman, the first witness is Mr. A. R. French. This comes under Item 3 on the agenda.

THE CHAIRMAN: Is this on the same topic as yesterday?

MR. COVERT: Yes, Mr. Chairman.

A. R. FRENCH, called.

MR. BARRY: Mr. Chairman, this witness' statement --

THE CHAIRMAN: Pardon?

MR. BARRY: The statement of this witness is contained at page 117 of Volume 1 of the Maritime Transportation Commission brief.

THE CHAIRMAN: Did you say page 17?

MR. BARRY: Page 117. There is also appendix 77 in volume 2.

EXAMINED BY MR. BARRY:

Q. Mr. French, you are the Manager of Enamel & Heating Products Limited?

A. Secretary and treasurer.

Q. Enamel and Heating Products Limited, at Sackville, New Brunswick?

A. Yes.

Q. You are familiar with the statement contained at pages 117 and 118 of volume 1 of the Maritime Transportation Commission brief?

A. I am.

Q. And the statement contained in appendix 77 in volume 2?

A. Yes.

Q. What is the business of the concern?

A. We manufacture all kinds of coal and wood and oil cooking ranges and heaters, warm air furnaces, and cast iron sanitary enamelware.

Q. This statement, Mr. French, contains a comparison which was prepared in September of 1948. Have you made some changes in it in the light of developments?

A. Yes, I have amended it to include the 8 per cent increase instead of the 20 per cent proposed. At the time the statement was made up it was on the proposed 20 per cent. It has now been amended to the 8 per cent.

Q. You have a competitor in Ontario, have you?

A. Yes, several of them.

Q. Have you made a comparison with one of them in the light of the 21% increase and the 8% additional?

A. Yes, I have.

Q. Would you give the figures, by way of comparison, that would be paid by your competitor on a similar amount of goods, and what would be paid by yourself before and after the increase?

A. Yes. This statement is for the year ended December 31, 1947. The reason for it not being for the year 1948 is it was prepared before the end of 1948, but it would compare with the year 1948 because the volume of business was practically the same. We shall take first the quantity of materials brought to our Sackville plant which is a stove manufacturing plant, consisting of pigiron from Sault Ste. Marie, steel sheets from Hamilton and enamel frits from Oakville. The freight before the increases amounted to \$27,230. Freight on the other miscellaneous materials too numerous to mention was \$43,892, making total freight on incoming raw materials to the Sackville plant of \$71,122. For a competitor located in Carleton Place we shall use the same quantity

of materials. His freight rates for the same materials totalled \$42,900, a difference of \$28,222.

Q. That is prior to the increase in the rate?

A. Prior to the increase. We were at that time at a disadvantage with our Ontario competitor to the extent of \$28,222. To that we add the 21% increase amounting to \$5,926, and the 8% increase amounting to \$2,731, increasing that unfavourable position from \$28,000 to \$36,880. That is the comparison of the plant at Sackville with a comparable stove plant at Carleton Place. I have similar figures comparing our Amherst plant, which is an enamelware business, with a Toronto manufacturing company which, on the same basis of comparison, shows a difference of \$29,751, making a total of about \$65,000 that we are at a disadvantage with our upper Canadian competitors.

MR. EVANS: Q. You do not add those two together, do you?

A. Yes.

THE CHAIRMAN: What is that?

MR. EVANS: I was asking the witness whether he added those two together.

Q. You do?

A. Yes. The first one was for our plant located at Sackville, and the second one was for the plant located at Amherst, N. S., \$36,000 in the Sackville plant and \$29,000 at Amherst, making a total of \$65,000 that we are at a disadvantage on the two plants.

MR. BARRY: Q. That is after the increases?

A. After the increases.

Q. As compared to the disadvantage prior to the increases of ---

A. \$50,000, an increased disadvantage of

approximately \$16,000.

Q. You heard the questions asked yesterday of Mr. Fisher with respect to costs of stoves?

A. Yes.

Q. What has the cost of a standard type stove increased in the last six or eight years?

A. The cost, not the selling price?

Q. Yes.

A. Labour has gone up close to 100 per cent. Materials are up between 50 and 60 per cent.

Q. But that situation would prevail as well with your competitors?

A. Yes.

Q. But their freight increase did not go up 100 per cent as their labour did and yours did?

A. That is right.

Q. You say the cost of labour has gone up almost 100 per cent?

A. Almost 100 per cent.

Q. What were the average profits of your company between 1936 and 1946?

A. Our average profits for those eleven years were \$28,086.

Q. Your profits were higher in 1947 and 1948, were they?

A. Very much higher.

Q. What caused them to be higher then?

A. In 1947 we went into the manufacture of oil burning heaters. Prior to that time practically all of the oil burning heaters were brought in from the United States. During that year our volume of business was greatly increased resulting in much larger profits, and also we expended very materially our exports to South Africa.

Q. Have you any market in South Africa now?

A. None whatsoever.

Q. That is lost now?

A. That was lost owing to the foreign exchange controls which were brought down in South Africa in November, 1948. Those controls were on a quota basis, but in February, 1949, stoves were put on a barred basis and we have lost that market completely.

Q. There was a strike in 1947, was there not, that affected your production, and which carried over into the next year?

A. Not a strike in our plants, but due to the unsettled conditions and strikes, and shortage of materials in 1946 we could not supply the demand, and we carried over into 1947 a very large backlog of orders.

Q. The situation in brief is that your comparative position with your main competitors has been worsened to the extent of the number of thousands of dollars you stated?

A. That is right.

Q. What is the amount of the total increased burden according to your statement?

A. The figures I referred to were the increases on the incoming raw materials, but when you take the increases on all freight, incoming as well as outgoing, it means an additional total burden of \$62,895.

Q. And by outgoing burden you mean shipping to your markets?

A. That is right.

Q. Where are your markets now?

A. Our markets are right across the Dominion of Canada from the maritimes to British Columbia and Newfoundland.

CROSS-EXAMINED BY MR. EVANS:

Q. Mr. French, I will try to be very short. You spoke of your average profit for the eleven-year period?

A. Yes.

Q. You said that the profits in 1947 and 1948 were much higher than that average?

A. That is correct.

Q. Could you, without disclosing information you think you should have kept confidential, tell me what the profit was in those years?

A. Yes -- from the year 1936?

Q. No, just 1947 and 1948.

A. In 1947 the profit before income taxes was \$268,000.

Q. Is that a comparable figure with your average of \$28,000 which you gave?

A. No.

Q. Will you give me the comparable figure?

A. For the previous years?

Q. No, your average for the eleven-year period was \$28,000?

A. Yes.

Q. I want the comparable figure for 1947 and 1948. Were they not after taxes?

A. No, these profits are before taxes in both cases.

Q. Then they are comparable in the sense that they are the same kind of figures?

A. I just do not ---

THE CHAIRMAN: These are a part of the figures used to make up the average?

MR. EVANS: The average covers a different period.

THE CHAIRMAN: Q. When does the average stop?

I thought it went right up to date.

A. Mr. Evans asked me the average --

Q. You gave us the average for certain years. What were those years?

A. The first average I spoke of was \$28,000.

Q. That was for when?

A. For the years 1936 to 1948 inclusive.

MR. EVANS: Q. Oh, were they?

A. Yes.

THE CHAIRMAN: Q. Then the year 1947 forms a part of that?

A. That is right.

MR. EVANS: Q. I took down that it was the eleven-year period from 1936 to 1946.

A. I have that average here -- I am sorry, the ten-year average of \$28,000 I gave you is for the ten years 1936 to 1946. The average for 1936-to 1948 is \$68,770.

Q. Yes. Now then, you gave me a figure of two hundred and some odd thousand dollars for 1947?

A. Yes.

Q. What was the same kind of figure for 1948?

A. \$245,000.

Q. \$245,000?

A. About \$23,000 less than the year 1947 on almost exactly the same volume of business.

Q. Now then, your profit in 1946, as I think you told us in one of the freight rate cases, was \$46,000?

A. That is right -- \$44,000.

Q. And at that time you were looking with considerable gloom, if I may put it that way, on what you thought would be the increased burden of \$50,000 in freight rates as a result of the then application?

A. That is right.

Q. Would it be fair to say that the pessimism you had at that time was not fully realized?

A. We did not anticipate the very abnormal demand that came in 1947 and 1948, and as already explained we went into the production of oil burning heaters when we were practically the only manufacturers of oil burning heaters in Canada, all the rest coming from the United States. That was the year 1947, and 1948. To-day nearly every stove manufacturer in Canada is manufacturing heaters. For a portion of the time during 1947 and 1948 there was a Canadian embargo on oil heaters coming from the United States. Therefore we not only capitalized on that embargo but also the fact that we were the only manufacturers, but to-day that market is off, and every other manufacturer is into that business. We do not expect to ever capitalize on the position in oil again.

Q. Have results so far this year been better than average?

A. Better than the average of normal years, but not as good as 1947 and 1948, as supply is catching up to demand very quickly.

Q. Where as a rule do you ship these new products, the oil burning heaters?

A. The majority of them are sold in Ontario and Quebec although they go right across the country, but the majority there.

Q. You are selling those in Ontario and Quebec in competition with local manufacturers in those provinces?

A. We did not have any competition from the upper Canadian people because they did not manufacture these heaters.

Q. To-day have you?

A. To-day they are manufacturing them, and we are

selling a small percentage in Ontario and Quebec compared to what we did.

Q. To-day you are selling a large part of your production of oil heaters in the maritimes?

A. Yes, the maritimes and British Columbia and the middle west, the prairie provinces.

Q. But a small proportion relatively in the central provinces?

A. It is a much smaller proportion than the years 1946 and 1947, but our volume in 1949 as a total is only small compared to the years 1946 and 1947.

Q. I do not want to keep you too long on this point, but would you give me a rough idea what proportion of your different products is marketed in the maritimes?

A. I can give you total products.

Q. Give me the proportion of your total products.

A. As to our total products, taking an average for the years 1944 to 1948, 71.3 per cent of our products was sold outside the maritime provinces. That varies, with 23, 31, 29, and 27 per cent, making an average of 28 per cent inside the maritimes and 71 per cent outside.

Q. What has happened in 1949 to date?

A. In 1949 to date, the end of October, 61 per cent outside the maritime provinces.

Q. So that your local market has grown relatively?

A. Not generally speaking.

Q. You have competition, have you, from the central Canadian producers in the maritimes?

A. Some, yes.

Q. Now then, there was something said, I think by Mr. Fisher, and as I recall it by you, in your statement in the maritime brief that wages in your industry had been roughly the same in recent years as in central Canada

where your competitors operate?

A. In recent years yes, just as high.

Q. I gather from that, Mr. French, that the wages in your industry in the maritimes are among the highest of any of the important industries there?

A. That is right.

Q. And is your industry higher than the average of the principal industries in the maritimes to-day?

A. I would not say so.

Q. I was wondering how your statement could be reconciled with the statement in the Maritime brief at page 46 of volume 1, where it is shown that in 1947 the average weekly wage in the leading industries in the maritimes amounted to \$33.46 whereas in the same year the average for Canada as a whole was \$36.76 per week. Would that not indicate to you, as it did to me, that in 1947 you had an advantage over other industries elsewhere in Canada in regard to wages?

A. We know that we have no advantage in labour in the stove industry and the enamelware industry regardless within the province. With industries as a whole I do not know, but we have an exchange of labour rates in code. We do not know the individual names of the other manufacturers, but we know we have all of them in Canada, and we have compared them year after year, and it has been compared for this year and last year, and our wages are just as high.

Q. I understand you are a cost accountant?

A. That is right.

Q. Can you tell me whether your industry, without telling me the details, has a manufactured cost more or less, for a given article, than your competitors in central Canada?

A. Yes, our cost is higher.

Q. Your cost is higher?

A. Yes.

Q. Has it always been higher in your experience?

A. Yes.

Q. It always has been higher.

A. The reason for that is that the upper Canadian manufacturers usually have a much larger volume which makes for lower overhead. As far as wages they are just as high now in the maritimes. As for raw materials they are higher because of this great difference on freight which we have to pay on incoming raw materials.

Q. I have two other small matters to take up with you. One is that your comparisons relate only to incoming raw materials?

A. That is right.

Q. You have not made an over-all study, have you, of the total freight bill compared with your competitors, including output?

A. No, that is a very difficult thing to compare unless you know where their products go, and so forth.

Q. I mean what you would do, as I understand it, is that you would take your product and move it to where it did move, and you would assume a location point for your competitor to make a similar comparison?

A. We are not so much concerned about that. It is not the additional freight we have to pay on the outgoing materials. It is on the raw materials coming in. For instance, on goods shipped from Sackville to Vancouver, as compared with from Ontario to Vancouver, prior to these recent increases there was no difference whatsoever. The rate was exactly the same. There is a difference now, but when you add that up it is only

hundreds of dollars. It is not a serious thing. The serious part is on the incoming raw materials. If you were to land our raw materials at Sackville for the same cost as central Canadian manufacturers I would not be here to-day arguing. We can absorb on the outgoing.

Q. Now then, may I summarize your position in this way, that as regards your maritime market you have an advantage over your competitors?

A. That is right.

Q. And that is a substantial advantage due to two things, that the inbound product of your competitor does not enjoy the maritime freight rate preference?

A. That is right.

Q. And you also have the advantage of your being closer to your maritime market?

A. Right.

Q. Now then, as regards that portion of your marketable product which goes to central Canada, you are at a geographical disadvantage with your Ontario and Quebec producers or competitors?

A. That is right.

Q. As you go west the disadvantage owing to your geographical location relatively is less compared with your central Canadian competitors?

A. On the outgoing freight position, yes.

Q. Then with regard to the foreign or export market when there is such a market -- I understand you have lost it recently -- when that market is available you have a very definite advantage over your competitors situated in central Canada?

A. Yes, we have ^{the} same advantage in our export business over central Canadian manufacturers as the central Canadian manufacturers have over us in central Canada.

Q. This brings me to my last point. When you make your comparisons, as you have done, with competitors in Ontario and Quebec, you are dealing there with the increased burden placed upon you by percentage increases, in your view?

A. That is right.

Q. And I am interested to know whether the purpose of that presentation is to indicate that you feel that you should be kept at all times on the same basis dollarwise in increased freight rates as your central Canadian competitors?

A. No, we do not feel that. That would be unfair, but if the freight rate increase to the Ontario manufacturer bringing his pig iron from Hamilton or Sault Ste. Marie to Carleton Place is 40 cents we do not expect you to bring that a thousand miles more for 40 cents, but where they pay 40 cents we pay say \$2.40. We do not expect you to carry it for 40 cents, but we think you should give us consideration and cushion the increase to the maritime industries so that we have a chance to survive.

Q. Perhaps I did not make my question clear.

A. I am sorry if I did not understand it.

Q. I am quite as much at fault as you are. What I was saying to you was is it your view that your industry, having regard to the relationship existing prior to the increases as regards freight rates, should maintain exactly that relationship dollarwise?

A. We would like it to be that way.

Q. Are you seriously suggesting it must be done or should be done to protect your industry?

A. No, I would not suggest that because there might be some company only fifteen miles away from the

source of supply, and if their increase was only 15 cents we could hardly expect you to give us the same 15 cents.

Q. I was wondering whether that had struck you because there have been previous witnesses who thought that literally should be done, in earlier cases.

A. No, that would be unfair. We do not expect anything that is impossible. All we want is to be given consideration in these matters so that the dollars we have to pay in increases are more but the percentage cushioned or lower. In other words, before the war this difference existed before the freight rates increase on so many thousands of dollars that we were at a disadvantage, but our labour costs before the war were considerably less than central Canadian manufacturers. As a matter of fact, our moulders worked on a ten per cent lower rate. The moulders work on a piece rate plus a board percentage, and they agreed to work for 10 per cent less than in Ontario. If the Ontario manufacturer went up to 50 cents on board ours was 40 cents. That difference has disappeared completely, and our wages are just as high. Before the war the lower wages we paid offset to a great extent the disadvantage of the extra freight we had to pay, but now wages are just as high, and we have so many thousands of dollars more disadvantage it is becoming a burden on the company. We are not thinking of the years 1947 or 1948; we are thinking of the future. When we look at these figures of profits for the ten years prior to 1947, or you can go back prior to the war, from 1930 to 1940, if you like, that is what we are worrying about, the impact which may be coming in 1950. We would judge that our volume of business will not be nearly as great in 1950 as it is in 1949 because our volume has been

kept up due to the demand for houses. We do not want this difference between the maritime manufacturers and central Canadian manufacturers to become so great that we have got to pull up stakes and move out of the maritime provinces.

Q. I was going to suggest to you that if you got that relief would your competitors in central Canada not have to have somewhat equivalent relief for the longer haul into the maritimes where they are competing with you?

A. I do not think that worries them very much. As I have said, for practically 70 per cent of our business we depend on outside of the maritimes, but if you take the other way around ---

Q. You would just as soon have a greater percentage in the maritimes, would you not?

A. We would, but we can only sell so much. The population is so small it will only absorb so much.

Q. Then I gather you have not much competition in the maritimes from central Canadian producers?

A. Not too much.

Q. You pretty well have the market to yourself locally?

A. When I say upper Canadian manufacturers, individually they do not do too much business there, but with all the manufacturers it is a factor. Take with ourselves; as I said, we depend on 70 per cent of our business outside of the maritimes. If you were to investigate you would probably find that 70 per cent of the business of the central Canadian manufacturers is in central Canada, and they are only looking outside for a smaller proportion.

Q. I was really interested to know only about your maritime market for the moment as to whether he is a

factor there, and to the extent that he is a factor I am suggesting to you that he might expect to have that preserved by similar treatment with regard to freight rate increases if you were to get that relief?

A. I doubt it; it is not an important enough factor.

Q. If he did not does it not follow that you would capture whatever part of the local maritime market he has hitherto had, or at least could increase your advantage?

A. What is the question?

Q. If he does not get that relief and you get it it makes your position in competition with him in your local maritime market that much better?

A. Well, it does, but as I say we are not looking for greatly increased markets in the central provinces. We only want to keep what we have got. We can carry on and make a fair profit if we can keep what we have got, but if the burden is increased and we cannot compete in the central Canadian markets then our volume is going to drop, our overhead go up, and our profits down.

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CROSS-EXAMINATION BY MR. O'DONNELL:

Q. I have a few questions. Your operation in the maritimes was originally based on the import of pig iron and steel sheets from England, was it not?

A. That is early history.

Q. And at that stage pig iron and steel sheets were processed more or less in transit. They stopped over at Sackville for a certain time, were treated, and were then shipped into the central Canadian market in the form of stoves, and so on?

A. That is right.

Q. To-day you bring your pig iron and your steel

sheets from Hamilton, central Canada?

A. That is right.

Q. And having treated them you ship them back into central Canada now?

A. A large portion.

Q. I understand the distance from Sault Ste. Marie to Sackville is 1,218 miles, from Hamilton to Sackville is 1,021 miles, and from Oakville to Sackville is 1,004 miles. On the other hand, your competitor at Carleton Place is 475 miles from Hamilton, in the case of pig iron, 267 miles from Sault Ste. Marie in the case of steel sheets, and in the case of frits he is 249 miles from Oakville where he gets his supply. So that on these units to which you have referred the railway, in the case of your competitor, has transportation to the extent of 991 miles on his raw materials, compared with transporting your raw materials 3,243 miles. That is merely the total of those three figures.

A. Yes.

Q. Then again at the Amherst plant a somewhat similar situation exists.

(Page 7200 follows)

Mr. French Cr.Ex.

At Amherst you likewise bring your pig iron from the Soo which is 1228 miles and your enamel frits from Oakville which is 1014 miles whereas your competitor at Toronto brings its pig iron from the Soo, 439 miles, and enamel frits 21 miles from Oakville, so in the case of the Amherst plant as against the Toronto operation of your competitor, the railways transports those units of your raw materials 2342 miles against 460 miles to Toronto

A. Correct.

Q. You are fair enough to say or concede that some allowance has to be made for that additional transportation and exactly what it is that is something that the Board of Transport Commissioners has to keep in balance as far as you are concerned?

A. Yes.

Q. Now you said, I take it Mr. French, that the increased burden that your company was obliged to bear because of increased freight rates was \$62,895. for the year ending December 31st, 1947?

A. Right.

Q. Now your competitors had an increased burden also, didn't they?

A. Yes, that is right.

Q. You have not any idea what their's were?

A. My figures from the statement, as you will notice, shows in the first statement a difference prior to the 21% increase was \$28,000. The first part of that statement shows that on the total incoming freight where we had \$71,000. they had \$42,000. The Ontario manufacturer in the 21% increase had to pay 21% on \$42,000; we had to pay 21% on \$71,000., which I think perhaps answers your question. We both had to pay the 21% but they had to pay on a much smaller amount.

Q. Your increased burden was \$62,895. That is not the difference between you and the competitor?

A. No.

Q. Now at the present time your business is holding up well, I think you said, and what you are worrying about is what might occur in the future?

A. That is right.

Q. That is primarily what concerns you? Have your F.O.B. orders held up also during the past two years or even increased possibly?

A. Well, the total figures would be about comparative.

Q. In these figures, Mr. French, that you give the Board you include certain freight to Victoria, British Columbia? That is to your plant there?

A. We have a small plant there, yes.

Q. What do you make there?

A. Cast iron furnaces, cheap boilerstoves and cheap camp ranges, etc. All of the better grade cooking ranges, heaters and that sort of thing are made in the Maritimes.

Q. Just as a matter of curiosity, what would the object have been of setting up a plant at the other end of the country?

A. We purchased that in 1929 as we figured that to have a plant in British Columbia our products might sell better because the people would say: "Here is a home made article and we should support our own province" - "sales staggering" you call it.

MR. COVERT: Just one question I wanted to clarify. I was not sure of the percentages that you gave for the business you did outside of the Maritimes. I understood the first figure prior to this year was an average of about 71%. Was that correct?

A. The average for five years ending 1948 was 71.3% outside.

Q. And what was 1948?

A. 1948 was 69.4.

Q. And have you any idea what the trend is now for 1948?

A. 61.1.

Q. Then there was one other point. I understood you to answer Mr. EVans that you have an advantage over your competitor in the Maritime market. Now what I wanted to find out was whether that was simply in distribution or whether that included also an advantage including your cost of production which, I understand, includes your freight on the inbound product?

A. Yes, our cost of production on account of the increased freight would be higher than the Upper Canadian manufacturer's would be.

Q. You were asked, I think, if you had an advantage over your competitor in the Maritimes market. Now I would think that that would be axiomatic that you would have as far as the freight rate on distribution of your product is concerned the same as he would have?

A. Yes, we have an advantage there the same as they have an advantage in Central Canada.

Q. What I wanted to find out was whether you had an advantage over your competitor in the Maritime market on your total overall cost of production?

A. No, we would not have.

Q. You would not have?

A. We would not have an advantage.

Q. Would not the nearness to your market overcome the increased freight cost, for instance, on your products or raw material end?

A. Well, you might look at it this way, that supposing our costs were exactly the same F.O.B. our plants in the Maritimes as they are in Ontario, then the Ontario firms would have the disadvantage of the additional amount of freight in shipping their products in, but we put that additional cost on the incoming raw materials and also the Upper Canadian plants are much larger plants and probably their costs, regardless of these conditions, would be lower than ours have been even though wages were the same.

Q. Can you tell me just this one thing, Mr. French, and that is; I understood that the freight rate increase has amounted to about \$16,000. on your inbound materials. Is that right - that is the actual increase itself. Is that correct?

A. The increase in the difference between our competitor in Ontario is about \$16,000. In other words it was so many dollars before and it is now \$16,000 more.

Q. Would it be an important item then to consider the percentage that that \$16,000 bore to your total costs of production?

A. What was that?

Q. Is that \$16,000 an important percentage of your total costs of production based on present volume?

A. Based on present volume it is not too great a percentage but as volume increases profits fall off very rapidly due to the increasing of overhead and it becomes more of a burden.

MR. EVANS: It would not end at \$16,000?

A. No, but your percentage would go up.

MR. COVERT: I was trying to find out whether that might not be one way of looking at the problem to see whether or not that was a very material factor in your cost. It seems to me it is the difference that is important. Is that

correct?

A. Yes, the difference is important and the amount of freight before these increases is more important now than it was before due to our wages being equal to the Upper Canadian. As I say, before our wages were lower than the Upper Canadian and that offset to a large extent the difference prior to the increase. Now then, it has that \$16,000 in it.

Q. There is just one other point I wanted to clear up and that is - you refer to the page in the Maritime Transportation Board's brief that dealt with the comparable wages. I suppose to be truly comparable you would have to have comparable industries?

A. Well, we have.

Q. But what I mean is if you say "Take the leading industries in one province and get the average wage paid and the leading industries in another" - if the leading industry in one province was say a machine shop and in the other it was perhaps a fish plant, then perhaps they would not be truly comparable?

A. No, we are not so interested in comparing our wages with say a fish plant because they are not in competition with us but we are interested in a comparable business. When I compare Carleton Place competitors, they make the same kind of product we do and in comparing wages it is not average wages; it is so much per hour, so much piece work for the moulders, piece fitters, grinders, and so on.

MR. BARRY: Mr. Evans asked you, Mr. French, if you did not have a compensating advantage in the Maritime local market over a manufacturer in Central Ontario. Now I understood you to say that your concern is not so much with freight on shipping finished products as it is with the raw material?

Q. So that any advantage you have under the Maritime Freight Rate Act would not be anything like your disadvantage on the incoming freight?

A. No, not at all - no comparison at all.

Q. The disadvantage on the incoming freight can you explain it to the Commission as to what percentage of the raw materials you use from the Soo?

A. Approximately 90% of all our raw materials comes from Central Canada.

Q. Is it all useable or is there some waste?

A. There is quite a lot of wastage.

Q. What percent?

A. In the matter of pig iron 40% wastage.

Q. On which you had paid freight?

A. Yes.

Q. And on which the other manufacturer has not paid nearly so much freight?

A. No.

Q. He is only paying on finished products?

A. Yes.

Q. So the compensating factor of the Maritime Freight Rate Act would not be comparable to the incoming freight?

A. No, not at all.

MR. EVANS: When you speak of 90%, do you include fuel in the 90%?

A. Yes.

Q. I thought you got your oil locally?

A. Well our coal which is a small percentage of the total materials used comes from the Maritimes but our coke comes from Montreal and it is only a very small percentage of the whole. When I say 90% that is

quite true.

COMMISSIONER INNIS: I wonder if you would care to express a view as to the effect of the Maritime Freight Rate Act on your business. Have you ever thought about that in a general sort of way?

A. Well, it has been a help; there is no doubt about that.

Q. And that would be true of all similar businesses or all similar industries?

A. Yes.

Q. But you have never tried to work out the precise figures?

A. No, not figures, exact comparisons.

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MR. COVERT: Now Mr. Chairman, the next brief is that of the Canadian Food Processors Association and Mr. C. W. Robinson, K.C. is presenting the case.

MR. PHIL RUSSELL ROBINSON CALLED

EXAMINED BY MR. ROBINSON

THE WITNESS: No relation between the two of us whatsoever.

MR. ROBINSON: Mr. Robinson is Secretary Manager of the Canadian Food Processors Association, Mr. Chairman. My intention was not to read from the brief because the brief has been filed but in my examination of the witness I may refer to certain paragraphs of the brief and then examine upon that. I think it will save time and bring it more to the point.

MR. Robinson, you are the Secretary Manager of the Canadian Food Processors Association?

A. That is right.

Q. And I asked you to bring with you today a

list of members of your Association so that it may be filed. Have you that list?

A. Yes sir.

Q. Would you produce it please? I would like to file it.

A. Who would you like for me to hand it to?

EXHIBIT NO.103 filed by Mr. Robinson; List of members
of Canadian Food
Processors Association.

MR. COVERT: I think to start off, Mr. Robinson, we will have the brief taken as read into the record.

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CANADIAN FOOD PROCESSORS ASSOCIATION

The Canadian Food Processors Association is a national organization. The members of this Association operate food processing plants from Nova Scotia to British Columbia, and are engaged in the canning and processing of the foods covered in the report of the Dominion Bureau of Statistics entitled "The Fruit and Vegetable Preparations Industry in Canada." The output of these plants provides a continuous flow of essential food products to every distributive centre in the home market, and to Canada's export markets throughout the world.

The ingredients and other finished and raw products, chiefly agricultural, used in the production of canned foods, are now drawn from every province in the Dominion, so that which affects the canned foods industry today affects Canada as a whole.

In our industry, transportation is the largest single expense item and the cost of freight entering the delivered price of canned foods plays a most important part in the resale to the consuming public. Our products generally are distributed through wholesale and chain store outlets, and then redistributed to the retail trade so that freight costs to these outlets is only one factor in the final cost of distributing the merchandise to the consumer. When transportation costs increase, the resultant higher consumer price discourages consumption and ultimately processor and carrier suffer alike.

We quote the following from the latest report of the Dominion Bureau of Statistics - entitled "Fruit and Vegetable Preparations Industry in Canada, 1947" - to indicate to you the volume of our business, and the

important position it holds in the economic life of the country.

A few of the major items covered by this industry are reported as follows:

Canned fruits 7,009,510 doz. equivalent to approx.
3,504,755 cases;

Canned vegetables, 22,423,557 doz. equivalent to approx.
11,211,778 cases;

Jams, jellies and Marmalades, 117,112,635 lbs. equivalent
to approximately 4,879,000 cases;

Canned soups and other lines of canned foods, 19,490,787
doz. equivalent to approx. 6,490,000 cases;

Catsup and sauces, 28,760,126 lbs. equivalent to approx.
1,917,340 cases;

Pickles and relishes, 4,836,881 gallons equivalent to
approximately 1,418,440 cases.

The total value of all products produced, as covered by this report of the Dominion Bureau of Statistics, amounted to \$152,712,901.00. Maximum employment occurred in September when 30,769 persons were employed by the industry. Total wages paid amounted to \$22,199,466.00.

We contend that our industry is adversely affected by certain inconsistencies and anomalies that exist in the Canadian Freight Classification and desire to present our views under Section 2 (a) and 2 (b), and section 4, of the terms of reference found in P.C. 6033 under which the enquiry is being taken by this Commission.

The importance of canned foods in our everyday economy has been established for many years. The canning and preserving of foods, in time of plenty when crop yields are abundant, insures us against a shortage of foods in the years when crop failures occur. Also the scientific methods used in packing canned foods facilitates their transportation to distant markets,

reducing the risk of loss to a minimum, and offering a convenient and economical means of distribution to the consumer.

Canned foods and allied lines have been accorded a fifth class carload rating in the Canadian Freight Classification No.19, C.T.C. 983, which is the same rating generally accorded manufactured commodities. Machinery was originally classified fifth class but with the elimination of cartage this traffic in carload lots was reduced to the sixth class rate; railway equipment, frogs, etc., -seventh class; vegetables, cereals and grains - eighth class; live-stock - ninth, and low-grade commodities such as lumber and coal - tenth class. Many of the above 8th and 10th class items move under special carload commodity rates. This general basis of carload ratings was established when the Classification was first published in 1884.

We feel that over a period of years the lower eighth class carload rating accorded fresh vegetables has discriminated unfairly against our industry. The improvement in dry and cold storage warehousing facilities now makes it possible to bridge the off-season months following the growing season, and has resulted in competition from fresh vegetables that did not exist some years ago.

Average canned food carloadings are much heavier than fresh vegetable carloadings and the risk of deterioration, loss, and damage is also much greater in the handling of fresh vegetables than it is in the movement of canned foods.

We submit that the rate to be assessed should have a closer relationship to the value of the article.

For example, the weight of machinery in carloads averages from 24,000 to 30,000 lbs. and, in value, may equal many thousands of dollars. The same is true of many other valuable commodities, i.e., wearing apparel, drugs, and high priced groceries, etc. Machinery, as previously stated, carries a sixth class carload rate, and yet the cost of canned foods, which only averages approximately 8 cents per pound, is rated fifth class carload in the classification.

It will be recognized that transportation costs are almost negligible as a factor when related to the value of machinery and life of the machine. In comparison, freight represents a substantial percentage of the delivered cost of canned foods as indicated in exhibit No. One, showing actual selling prices of representative items.

These are factors which must be taken into consideration as there are many articles used for household purposes, and manufactured articles of various kinds, on which the cost of transportation in the laid-down cost of the article is so small it can hardly be seen, whereas, take as an example, on canned foods at an average of 8 cents per pound, the percentage of carload freight, on a movement from Toronto to Calgary, would be equivalent to 30% of the processor's sale price. Taking a higher priced article, even worth only \$1.00 per pound, and paying the same carload rate of freight of \$2.40, the percentage of freight on the shipper's price in the same market would only be equivalent to 2.4%, and even with the 20% which the carriers are now asking the board of Transport Commissioners to authorize these higher priced commodities would only be increased by an additional $\frac{1}{2}$ of 1%; whereas the canned foods would

rise to 36% of the processor's sale price or a 6% increase.

We submit the freight on high priced articles is such a low factor that it is hardly to be considered as being compelling or influencing or affecting, in any great way, the merchandising of goods, whereas the situation on low priced commodities is just the reverse.

We also find the influence of the lower classification given fresh vegetables reflected in the rates, and correspondingly in the minimum carload weights and earnings from B.C. coast terminal points, and also B.C. interior points to destinations in Western Canada. We are attaching exhibit No. Two, indicating the advantage that fresh vegetables enjoy over canned vegetables and allied lines. We are also attaching exhibit No. Three, showing a comparison from Southern Ontario to Western Canada, and the minimum weights and earnings on canned fruits and vegetables versus fresh fruits and vegetables in carloads from Southern Ontario.

We refer to the statement of the Freight Claims Division of the Association of American Railways for the calendar year 1948 in further support of our contention that the value of the goods principle does not receive the consideration that it deserves in Canadian Freight classification. Total claims paid in 95% of the United States, Canadian, and Mexican mileage, amounted to \$135,390,664.00. Fresh fruits and vegetables accounted for 15.2% of the total, whereas food products not otherwise specified which would, of course, include many other high priced grocery items not included in our application, were responsible for but 5.7%.

According to the Interstate Commerce Commission statement No. 48100, 1,024,192 refrigerator cars were re-

quired during 1947 to handle shipments of fresh fruits and vegetables. In comparison, canned foods moved during the same period in refrigerator cars only to protect contents against freezing, in 415,693 cars. It is interesting to note from the same statement that in fresh fruits and vegetables the average loading in tons per car was 17.37 tons, whereas it was 28.94 tons per car for canned foods, or 60% heavier. While these are American figures we believe we are safe in assuming that the same relationship in the average tonnage per car exists in this country.

It is interesting to note here the remarks of Commissioner McCaffey of the Interstate Commerce Commission, in the Western-Southern class rates 266, I.C.C.534.

"Transportation of class traffic has changed vastly since this system of rates and classifications was devised. Motor transport has become important and has taken much of the business. Instead of attempting to meet this competition by rate reductions as such, or by all commodity rates available to a limited class of shippers, and forwarder operations, it is my view that what is required is a thorough revision of the entire basis of rate making on this traffic. Such a revision is only delayed by further attempts to patch up out-moded structure."

Grain is classified 8th class and carried at special commodity rates, when processed for human consumption many of the processed products, notwithstanding their enhanced value, such as cereals, flaked or shredded, toasted wheat, oats, rice, all puffed, and rice rolled

and toasted, together with flour, including biscuit, cake, pancake, all of which have added ingredients, are carried at the same as grain classification or lower, where special grain rates are in effect. On the other hand, fresh vegetables take Eighth Class when shipped as fresh vegetables, but when processed and canned they are raised to Fifth Class carload.

It is submitted that this division is inconsistent and unjust and that the farmer or grower of fruits and vegetables should be entitled to the same consideration on the marketing of his processed products as that accorded the grain grower.

We maintain that the classification should be revised in keeping with the many adjustments in prices that have taken place during and since the classification was instituted. It may be said that the comparison of the relationship of the prices and the values as they exist of commodities with their classification in the Canadian Freight Classification has reached a point where true value of the commodities is not taken into consideration in classification carload basis. Even a casual inspection of the classification will bring to our mind the pyramiding of prices and values from 200% to 300% that have taken place in many commodities since 1939.

We realize that the railways cannot be expected to revise the classification to meet the rapid shifting of business conditions as they occur, but we know now that the cost of production will prevent many commodities from returning to anything approaching their former value or price level. The farm product prices index in April of this year reached 224.5 and the Dominion food index 199.5. The average index of canned soups stood at

140. despite the fact that agricultural products are the main ingredients used in their production.

Special commodity rates which were established by reason of other forms of competition and continued during the war years under ceilings imposed by the W.P.T.B. offered us relief from the onerous imposition of class rates as provided in the classification. However, the removal of price ceilings and almost immediate increase in rates allowed the railways under the 21% rate case, and subsequently a further increase of 15% in competitive commodity rates, removed almost entirely any advantages received by the canning industry, and has resulted in increases of almost 100% in rates to some markets. Carriers claim these were depressed rates but it should be kept in mind that delivered prices were constructed on these rates and, in common with the railways, were also held at a level under price ceilings that permitted only the closest margin of profit.

When the ceilings were removed, the public had already become price conscious, which precluded any opportunity to improve our position. In addition, those close to the industry know that public reaction can be quick and sharp when canned food prices are advanced beyond a certain level.

Our problem then, to a degree, parallels that of the railways and substantiates the basis of our appeal to the extent that if we are to maintain our volume, lower prices, and meet outside competition, then we must have a classification of rates consistent with the burden which the products we merchandise nationally, and export to the world markets, will bear.

We feel that the whole burden of transportation

rates and tolls should be more equitably distributed and suggest this can be accomplished if commodities of a permanent nature and relatively high value carry a classification that more accurately reflects their true position in the general movement of traffic. We are not critical of the railway policy in this respect. Price ceilings imposed on their rates, and more recently the hearings before the Board of Transport Commissioners and the present inquiry, may have prevented any contemplated action they intended to initiate.

In conclusion, we are strongly of the opinion that this Commission should recommend the entire revision of the Canadian Freight Classification creating additional classes somewhat similar to practice employed by the Official Classification in the United States, and such revised Classification give greater consideration to the factor of the value of goods and the liability assumed by the carriers in transportation. As we have pointed out, it is most inconsistent and unreasonable that articles of more permanent nature, value, risk and liability, are carried by the railways on the same or lower basis, as many other low-priced commodities, including the products of our Association.

All of which is respectfully submitted by:

Canadian Food Processors
Association.

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MR. ROBINSON: Thank you Mr. Covert. This list of members which has been filed as Exhibit 103 I have added them up and I make it 84. That is correct is it?

A. That is correct.

Q. These 84 members I notice amongst the names are leading firms in this branch of business such as Campbells Soup Company Limited, Canadian Cannery Limited, H. J. Heinz Company of Canada Limited, Libby McNeill & Libby Canada Limited and Stokley Van Camp amongst those 84. Could you tell me amongst the members of your Association what proportion of fruit and vegetables and allied products is processed by your members in Canada during the year?

A. Yes, I recently sent that same list of members to the Dominion Bureau of Statistics and asked them to please report to me what percentage of the total dollar volumes of sales of the industry is covered by our members. The reply is 78.9%.

Q. So that in this brief of the Canadian Food Processors Association you are speaking to close to 80% . food producers, close to 80% of all the processed food, vegetables and allied products in Canada?

A. That is correct.

Q. That is all I have to ask this witness, Mr. Chairman.

THE CHAIRMAN: Mr. Covert, are there any questions?

MR. COVERT: No sir.

MR. ROBINSON: Thank you Mr. Robinson; I will call Mr. Caldwell.

W. R. CALDWELL, Called.

MR ROBINSON: Mr. Chairman, before I examine this witness, I might say that I have received two letters which I should like to file as exhibits; they are very short. I am filing them for the purpose of indicating the support for this brief.

There is a letter from the Canned Foods Association of British Columbia, addressed to myself, which reads:

"Dear Sir:

"Mr. P. R. Robinson, Secretary-Manager of the Canadian Food Processors Association has suggested that I write you direct pointing out that the following motion was passed at a general meeting of this Association held in Vancouver on October 7th, 1949.

'It was regularly moved, seconded, and agreed:

THAT this Association support the brief submitted by the Canadian Food Processors Association to the Royal Commission on Transportation on August 31st, 1949.'

"If there is any way in which you can inform the Royal Commission on Transportation of the above motion it would be very much appreciated."

August 31st, 1949, as mentioned there, is the date of the brief; it is dated as filed. That is from the Secretary-Treasurer of the Canned Foods Association of British Columbia.

Then there is a further letter, dated November 1st, 1949, addressed to myself, from the Secretary-Treasurer of the Canned Foods Association of Ontario:

"Dear Mr. Robinson:-

"This will advise that the Transportation Committee of the Canned Foods Association of Ontario

wholeheartedly endorses the recommendations contained in the brief which is being presented to the Royal Commission on Transportation by the Canadian Food Processors Association.

Yours faithfully,

(Sgd) S. P. McCandless

Secretary-Treasurer."

I should like to file those, Mr. Chairman, as exhibits, the purpose being, of course, to show that these Associations in these two provinces, which between them produce the majority of the processed food in Canada, are in agreement; in other words, this is not a sectional matter; we are speaking for the canned food processors throughout Canada, and central Ontario and the west coast are in agreement on the matters that are submitted here.

MR COVERT: Mr. Chairman, I was going to suggest that, since he has read them both into the record, that will be sufficient, rather than filing them as exhibits.

THE CHAIRMAN: They have been read now.

MR ROBINSON: I am quite satisfied to accept that suggestion.

EXAMINED BY MR ROBINSON:

Q. Mr. Caldwell, you are the Traffic Manager for Canadian Cannery Limited, and you reside in Hamilton?

A. That is right.

Q. And how long have you been with Canadian Cannery Limited?

A. Well, with the Canadian Cannery and Dominion Cannery, their predecessors, thirty-four years, going on my thirty-fourth year.

Q. And how long have you been Traffic Manager?

A. Thirty-four years.

Q. Canadian Cannery, including the western subsidiary

in British Columbia, have plants in Ontario, Quebec and British Columbia?

A. And Nova Scotia.

Q. And Nova Scotia. So that your company has plants from coast to coast?

A. Yes, sir.

Q. Do you know offhand how many plants you have operating?

A. Oh, I would say offhand about fifty or sixty.

Q. About fifty or sixty plants. Then as to your qualifications, I understand that you are a member of the Transportation Committee of the Canadian Food Processors Association?

A. That is right.

Q. And that you are a member of the Advisory Council on Traffic Management for the LaSalle Extension University of Chicago?

A. That is right.

Q. I should like to deal with the brief; and you have a copy available, Mr. Caldwell?

A. Yes, sir.

Q. I should like to deal with a statement made in the last paragraph on page 2, starting the fifth line from the bottom of the page, which states:

"Canned foods and allied lines have been accorded a fifth class carload rating in the Canadian Freight Classification No. 19, C.T.C. 983, which is the same rating generally accorded manufactured commodities. Machinery was originally classified fifth class but with the elimination of cartage this traffic in carload lots was reduced to the sixth class rate; railway equipment, frogs, etc., - seventh class; vegetables, cereals and grains - eighth class; live-

stock - ninth, and low-grade commodities such as lumber and coal - tenth class. Many of the about 8th and 10th class items move under special carload commodity rates. This general basis of carload ratings was established when the Classification was first published in 1884."

Now, you assisted in the preparation of this brief?

A. That is right.

Q. And you have checked, have you, as to the classification of these items that I have referred to in this paragraph?

A. Yes, sir.

Q. Could you give the reference on machinery, 6th class?

A. Machinery is classified as per page 165 to 175 inclusive of the Canadian Classification, No. 19, C.T.C. -- that is the Canadian Transport Commission number -- No.983.

MR COVERT: Mr. Chairman, I do not want to interrupt, but it is for the purpose of shortening things. Counsel for the railways inform me that it could be admitted that those were all correct as to classification, I believe with the possible exception that all vegetables do not come within the 8th class. I think, if they are trying to establish, for instance, that machinery was originally classified 5th class with the elimination of cartage, that is correct, and there is no need of proving it further.

MR O'DONNELL: It is not all correct the way it is stated; there are differences and distinctions, but generally speaking it is correct.

MR SINCLAIR: Generally speaking the facts are correct. As to cereals and grains, it all depends how you define it. On the general basis the statements are correct.

THE CHAIRMAN: As I understand it, this submission

consists of the expression of a desire to have some classification changed in respect of certain commodities; is that what it is?

MR ROBINSON: Not necessarily, Mr. Chairman. The purpose of the submission is to show that in this particular industry, the processing of food, there is an anomalous position in our classification; our purpose in showing that clearly and bringing it to the attention of this Commission is to suggest to this Commission that it is indicative of the outmoded and antiquated system of classification. In other words, we submit that it is within the powers of the Commission, and one of the objectives is to suggest possibly a revision of the scheme of rates. So our purpose is to show here in a clear way that this is an anomalous and discriminatory matter, and our case we think that it follows through, as in other cases, and our submission will be, rather than put another room on the house you may have to tear the house down and build a new one, in effect. That is the purpose of the submission, and I think it comes most directly within the terms of reference.

THE CHAIRMAN: I do not say it does not -- a matter of guidance, I suppose, to the Board in making a revision; but as a matter of fact has an application by your people ever been made to the Board of Transport Commissioners on this very point?

MR ROBINSON: My understanding is, not by this Association. I went into that too, and I was advised Mr. Caldwell can speak to it, that in certain past cases -- he mentioned one of the Town of Simcoe, in which Canadian Cannerys are interested, where the Board felt, because such a condition and such a rate structure has been in existence for so many years, that, although there might be considerable merit to the suggestion that it was discrimination, their

position was such that no relief could be given; Mr. Caldwell can speak more particularly to that -- in other words, that the Board has sort of been bound by a practice which has grown up, which burden this Commission does not have.

MR SINCLAIR: Could you give us the name of the case?

THE WITNESS: The Town of Simcoe, the Board of Trade, asking for a schedule "A" basis, the standard "A", so that they would be accorded the same rates as other town tariffs, in the town tariffs.

MR O'DONNELL: That is a different rate, though.

THE WITNESS: It was before the Board on different occasions.

MR O'DONNELL: But the matter of the classification; has your Association ever applied to the Board of Transport Commissioners for a change in the classification that you were suggesting should be made?

THE WITNESS: In 1915 in the 5% case we asked that the same consideration be given to canned vegetables as on fresh vegetables, 8th class rate.

MR O'DONNELL: The Board's last general order governing classifications is No. 562, dated May 13, 1937. Has your Association at any time since then made a request to the Board of Transport Commissioners to exercise the jurisdiction which I understand is theirs to change the classification if it were proper so to do?

THE WITNESS: As a matter of fact, we did not think it was worth while, for this reason, that on previous occasions when there has been old-established practice there we never got anywhere at all, in the case of the Town of Simcoe for the reason that the basis and the structures have been in effect for years and they should not be changed.

MR O'DONNELL: Yes, but the case of the Town of

Simcoe, as I understand it, was a matter whereby you requested a different rate and not a change in the classification, and all your brief deals with is a suggested change in classification of canned goods.

THE WITNESS: Well, not only that, but for the reason in connection with the Commission, in so far as the terms of reference there, for the purpose of any inconsistencies that might exist in connection with the tariffs or classifications. We have felt, so far as the Association is concerned, that, the thing of course being of national scope, it is something as to which the Board of Transport Commissioners in the first place, considering the fact that it has been in effect since 1884, should have an opportunity of being instructed by this Commission, calling for a proper revision of the classification. They have undertaken similar revisions of classification in the United States, but there has been no move here.

MR O'DONNELL: Why didn't you ask them to do it here? That is my point.

MR. ROBINSON: Is not the answer that the Board itself is standing adjourned, as I understand it, awaiting the report of this Commission before considering certain matters now before them? Surely this is before them. If we are complaining about a certain matter, rather than go to the Board of Transport Commissioners at this time, when we know that the Government has appointed this Commission for the specific purpose of bringing in a report and recommendations, this is before them, and the Government will implement the report of the Commission. It seems to me this is the time and place to make the submissions, because the recommendations of this Commission, implemented by the Government and transmitted to the Board of Transport Commissioners, will, we hope -- and we hope that our hopes

will not mislead us -- give us some relief. That is the purpose; that is why we are here.

MR. O'DONNELL: The only thing I might say to that, Mr. Chairman, is -- I do not want to prolong the discussion -- the closing paragraph in the powers of the Commission under the reference state that matters which are within the exclusive jurisdiction of the Board of Transport Commissioners are not to be interfered with here, and --

THE CHAIRMAN: Not matters; functions.

MR. O'DONNELL: Functions, yes; and the Board of Transport Commissioners has the express power, I think, under Section 322, possibly among others, to deal with this matter, and no request was ever made by the Association.

THE CHAIRMAN: But I suppose Mr. Robinson has in view this, that we are instructed specifically to review the Railway Act with respect to such matters as guidance to the Board in general freight rate revision, among other things. That is what you have in mind, is it not?

MR. ROBINSON: Yes, my lord.

THE CHAIRMAN: Now, bearing that in mind, is there anything in your brief that comes within our purview?

MR. ROBINSON: Yes. You were referring to paragraph 2(b) of P.C. 6033.

THE CHAIRMAN: Yes.

MR. ROBINSON: There is also paragraph 4.

THE CHAIRMAN: What I mean is this: the thing is possible, but for the present I do not imagine the Railway Act, which says certain commodities shall be in certain classifications -- that is right, isn't it?

MR. ROBINSON: Yes.

THE CHAIRMAN: It will always be a matter for some body to deal with, the Board preferably, but as a matter of guidance, as a matter of principle, have you anything to suggest that we ought to recommend?

MR. ROBINSON: Yes, we have, definitely, and that is what I intend to deal with.

THE CHAIRMAN: That is the point. What is it you want us to recommend in connection with your case?

MR. ROBINSON: Well, I was going to refer to a paragraph on page 3 of the brief, the paragraph starting about halfway down the page:

"We submit that the rate to be assessed should have a closer relationship to the value of the article. For example, the weight of machinery in carloads averages from 24,000 to 30,000 lbs. and, in value, may equal many thousands of dollars. The same is true of many other valuable commodities, i.e., wearing apparel, drugs, and high-priced groceries, etc. Machinery, as previously stated, carries a sixth class carload rate, and yet the cost of canned foods, which only averages approximately 8 cents per pound" -- it is actually less than that -- "is rated fifth class carload in the classification."

So that is one fundamental submission, that in making tariffs the value of an article has been lost sight of.

Another submission is that the risk position of the article -- as for instance carrying a case of canned goods from Hamilton, Ontario, to Winnipeg packed in corrugated boxes and individually in cans -- the risk should be much smaller than, for instance, taking a carload of shredded wheat or puffed wheat or similar

articles out there, and yet we are paying fifth class, we are classified fifth, and they are classified eighth, yet the risk to the railway as far as claims are concerned is much higher on the article which is paying the lesser amount. So there are two positions there, the value and the question of loss, both of which we submit should be fundamental in a rate structure, and we say that that has been lost sight of and we think we can show through Mr. Caldwell the specific instances to indicate that to this Commission.

Have I answered you, Mr. Chairman?

THE CHAIRMAN: Yes; there may be some principle involved. Of course, we want to hear you, just to see. The reason why I raised the question was this: the more recent your application to the Board for consideration, the more useful the case would have been to us here. Now, I understand from what has been said that you have not gone to the Board at all in recent years; is that right?

MR. ROBINSON: I understand that is so, but I am also instructed that the Ontario Canned Foods Association did make an application and intend to submit evidence before the Board of Transport Commissioners somewhat along this line -- they will certainly refer to some of these principles -- and that stands adjourned, as other matters do, as I am instructed, awaiting the report of this Commission, so that in effect they as an association have raised the position or intend to; they have left the way open, but standing over, believing the over-all picture of the Canadian Association should go to this Commission so that it may be dealt with and kept in mind in any recommendations made.

THE CHAIRMAN: Q. Well, I do not know offhand

just what points are reserved by the Board pending the report of this Commission, but, in any case, the position is this, that this is a matter over which the Board has complete jurisdiction today.

MR. ROBINSON: On the fixing of the rates.

THE CHAIRMAN: Yes, on the settling of classifications.

MR. ROBINSON: I am so instructed.

THE CHAIRMAN: But you say that hitherto in respect of your particular commodities they have followed some wrong principle in classifying you.

MR. ROBINSON: Yes.

THE CHAIRMAN: And that should be cleared up by some amendment to the Railway Act?

MR. ROBINSON: Yes, or some recommendations from this Commission to that effect.

THE CHAIRMAN: All right.

MR. EVANS: May I just say one or two things about that?

THE CHAIRMAN: Yes.

MR. EVANS: It strikes me that my friend is a little inconsistent. He has in his opening statement suggested that one of the things he is asking this Commission to recommend is a complete overhaul of the classification. Now, I just offer this observation. I do not want to obstruct my friend, I do not want to prevent him from being heard, but there is this observation which I think will be helpful. The classification, in my humble submission, would involve a great deal more consideration than the presentation of evidence with regard to one class of commodities. To suggest that the whole classification may need overhaul merely because one class of commodities may not be classified to

suit the industry, to my mind is a quite inconsistent suggestion, and I suggest that if it were done, for your Commission to have to understand the need or lack of need for overhaul of the classification, we would be here for many months, because there is no more involved and difficult subject than that.

Now, the other thing that my friend said was that he thought that your Commission might make a recommendation that the value of the goods be given greater weight in the classification of commodities. Well, my suggestion is that if you are to determine whether in a given case or as a general principle the value should bear a greater relationship than heretofore in the placing of commodities in the classification, one has to measure not only the changes in the matter of value, but all of the other aspects that are dealt with in considering classification questions.

I just put those observations in the hope that they will be helpful, because if there is any suggestion, as I understood my friend to make, that the Board has in any judgment said that it felt precluded from making changes in classifications because of the long standing of the particular commodity in that class, I would like to have a reference to it, because I do not recall any. I do not think the Board has ever taken the position that because a commodity may be classed in one particular class for a number of years it will not hear cases and hear argument with a completely free mind to justify a change in that. I myself have appeared in a few cases where the Board has changed the classification of commodities. One of them happened in recent years to be one of my friend's clients; the Stokeley Van Camp Company got processed or semi-processed dried beans changed from one classification

to another. Now, I suggest that if my friend has that kind of decision he ought to produce it; it would be very helpful.

THE CHAIRMAN: On another point, Mr. Robinson has told us that the Board has adjourned the decision of a certain part of a recent application pending the report of this Commission, and that his case is one of those that comes under what I might call the adjourned portion of the application; is that right?

MR. EVANS: I think what my friend has reference to is probably the fact that the Board has not proceeded with the general investigation into the rate structure, but I fancy that my friend has made a submission in that connection to the Board which he assumes will not --

THE CHAIRMAN: No, no. I think the reference is not to that; I think the reference rather is to certain portions of the application recently made by the railways to the Board for increases, and in that judgment, as I understand it, the Board has said, "Certain things we are not going to decide now; we are going to wait until this Royal Commission has reported." Isn't that right, Mr. Robinson? And you think that among those postponed questions this question of yours will arise. Is that what you said?

MR. ROBINSON: I said, Mr. Chairman, that no representations had been made by the Canadian Food Processors, but that I was advised that the Ontario Association had filed material under which they could come in before the Board of Transport Commissioners.

Q. Mr. Caldwell, can you clarify that?

A. That is perfectly true. We had a certain length of time in which we understood that the Canned foods Association had to file an application in connection with

discrimination and other features and also in connection with classification, that we thought there should be some revision of the classification and also some consideration should be given to according a lower basis on canned vegetables, considering the fact that fresh vegetables were carried at an 8th class rate, and that was filed and is at the present time on file with the Board, and my understanding of it is that the Board is not going to proceed with that general investigation until this Board concludes its hearing. Our idea in this particular application was that consideration should be given to the fact that it is such a nation-wide thing, in other words that the Board be instructed to review the whole of the classification, and then possibly we would be able at least to have the matter given some consideration.

MR. O'DONNELL: Q. Your submission was filed in connection with the general freight inquiry which the Board was ordered to carry out under Order in Council P.C. 1487?

A. It was filed with the Board of Transport Commissioners. As a matter of fact, it was filed before it was filed here, and then we were advised that it would be well to submit that matter to this particular Commission.

THE CHAIRMAN: Q. You say it was decided?

A. It was decided, yes, sir.

Q. By yourselves?

A. We thought under the terms of reference that the matter was to be dealt with here.

THE CHAIRMAN: I just wanted to know that. There must have been a misunderstanding. I thought Mr. Robinson said at the beginning that the Board had adjourned consideration of matters of this class under a

recent application, but evidently I am wrong about that.

MR. ROBINSON: I am sorry. I did not mean a particular or specific application; I meant in the general matter.

MR. O'DONNELL: Might I just ask Mr. Caldwell this:

Q. Do you say, Mr. Caldwell -- I did not hear the last remark you made to the Commission -- did you indicate that the Board of Transport Commissioners told you that they would not proceed with an inquiry into this classification?

A. My understanding was, according to newspaper articles, that the matter of the general investigation of freight rates was not to be started by the Board of Transport Commissioners until such time as this Commission had concluded its findings.

Q. But you never had any advice from the Board to that effect?

A. No, no, I never got any. Well, we haven't heard anything further from them, that is all.

THE CHAIRMAN: All right, go on.

MR. ROBINSON: Q. Mr. Caldwell, in your brief on page 3, the last clear paragraph, the last sentence, you say:

"In comparison, freight represents a substantial percentage of the delivered cost of canned foods as indicated in exhibit No. One, showing actual selling prices of representative items."

Now would you turn with me to Exhibit No. 1 of the brief?

A. Yes, sir.

Q. Which is immediately after page 7. By the way, there is one correction there: in the fifth line from the end, "Peaches, fancy", in the fifth column over,

instead of \$5.00 it should be \$5.20, and the percentage on the end of that, instead of being 13.1, should be 13.7. Now, subject to that correction, Mr. Caldwell, did you check the selling prices?

A. I checked those selling prices with our own sales department.

Q. So that these are sales prices covering the period indicated, and you have verified through Canadian Cannery Limited?

A. That is correct.

Q. Having reference to the value, in the outside column, taking the first item, golden wax beans in 20-ounce cans, showing a value per pound of 8.2 cents, that is an f.o.b. price factory, is it?

A. That is f.o.b. factory, shipping point.

Q. So that to that price freight would be added necessarily?

A. Yes, sir.

Q. Then, taking the case of shipping a carload of canned goods to Calgary and Edmonton, what is the rate say from an Ontario point?

A. Well, the rate prior to October 11, 5th class carload rate, was \$2.40, I believe.

Q. From where?

A. From Ontario or Quebec, around Montreal.

Q. To Calgary and Edmonton?

A. Yes.

Q. Was \$2.40 a hundred weight?

A. Yes, sir.

Q. So that that would be 2.4 cents a pound?

A. That is right.

Q. Now, am I correct, that in working out this schedule, taking beans, for instance, which happens to

be the first line, you are dealing with 20-ounce cans?

A. Yes, sir.

Q. And you show in your fifth column that the sales price was \$3.00 per case?

A. That is right.

Q. That is a case of 24 cans?

A. That is right.

Q. And then you show your weight as 36-1/2 pounds?

A. That is right.

Q. Would I be correct in taking 24 cans weighing 36-1/2 pounds, dividing it, that it would be a pound and a half to a can, approximately?

A. Yes, just approximately.

Q. So that, taking that out to your value per pound, say in beans, 8.2, that would mean a can would be 12.3 -- that is, 4.1, one and a half times that?

A. With the freight added, plus the selling price.

Q. That is the f.o.b. price, 12.3, to which freight would be added; am I correct in that?

A. That is right.

Q. Then the freight from Ontario to Calgary and Edmonton at 2.4 cents a pound, I make that 3.6 cents a can?

A. That is right.

Q. So that a can that would sell for 12.3 cents from the factory, the freight to carry that out there is 3.6 cents?

A. That is right.

Q. Have you worked that out to a percentage of the freight over the actual processor's sale price?

A. I think I worked it out at somewhere around 28 or 30 per cent. I have not just got the figure here, sir.

MR. ROBINSON: I won't be taken to task for leading. I worked it out at 33 per cent, and my friends can check me if I am incorrect. 33 per cent would have to be added to the laid down processor's cost to the wholesaler to carry the article out there.

Q. Then, looking at your last column, showing the various values per pound on these representatives articles, fruits and vegetables, have you checked out the average there on that last column?

A. Well, adding them all together and dividing them by the number of items, it works out to about 7.29 cents per pound.

Q. About 7.29 cents per pound as the processor's sale price to the wholesaler on this representative list? That is correct?

A. That is right.

Q. Then I am not going to deal with all these items. There is only one other item I would like to deal with here, because I am instructed it is one that is very widely used: tomato juice, in the sixth from the bottom, fancy; fancy, I understand -- is that the best grade?

A. They are graded from the government regulations, fancy, choice and standard. The best grade is fancy, the second is choice, and the third standard.

Q. That is not your own --

A. No, those are government regulations.

Q. So that we take fancy as the top grade?

A. Yes, sir.

Q. On 20-ounce tomato juice, as I read this, a case is \$1.80?

A. That is right.

Q. That is 24 cans?

A. Yes, sir.

Q. Weighing 36 pounds, and we get 5 cents a pound?

A. That is right.

Q. Now, there is another article here; I notice one article there of pumpkin, which is a larger one, 28?

A. That is right.

Q. Have you worked out any figures to show the percentage relationship of the freight on pumpkin, that is, to lay down pumpkin in Calgary and Edmonton costing 4.2 cents a pound to the wholesaler? Have you worked out what the cost of freight would be on taking that out?

A. Well, that would be equivalent to 28 cans or equivalent -- 24 cans to the case, or equivalent to one-half of the 12 cans, which would reduce it to 26-1/2, and a fraction, by the time you got the 2.4 cents a pound, the same as we worked out there before, would be equivalent to about 5 or 6 cents a can.

Q. And, taking 4.2 cents a pound, a can would work out to what? Around 10 or 11 cents?

A. You mean f.o.b. shipping point?

Q. Yes.

A. Yes, around there.

Q. And you are paying a 5- or 6-cent rate?

A. That is right.

Q. To take that to Calgary?

A. Yes.

Q. Now, there was a statement made earlier about vegetables and certain things getting an 8th class rate. We have golden wax beans in this category in the cans. Can you give us any information on the classification of fresh wax beans and fresh asparagus, the rate that is given to them?

QA. Well, under Canadian Pacific tariff No. W-22-B, C.T.C. No. W-4016, on page 65, the classification is

practically removed from the Canadian classification and inserted in this freight and vegetable tariff, which includes practically all lines of vegetables here at 8th class rate, includes asparagus and beans not dried, beets, brussels sprouts, cabbage, carrots and tops, carrots, cauliflower, celery and Chinese vegetables, all at 8th class rate. In addition to that there is corn in husk and many others, many of these items here, although they are right in the 5th class in Canadian classification No. 19, and possibly carried here in eastern Canada, on the other hand there are many in the Canadian classification that are accorded the 8th class rate.

Q. What have you to say as Traffic Manager outside of the value of the comparison between the value of the canned goods and the fresh vegetables, what have you to say as to the risk value in transporting your carloads of canned goods as against these fresh vegetables?

A. Well, there is no doubt about it that the risk in connection with the transportation of fresh fruits and vegetables by far exceeds that of the canned goods and vegetables. While I have endeavoured to procure some information from a statistical standpoint as to what that status is here in Canada, I have not been able to obtain it, but I have taken here as a basis a circular, No. 1381, issued by the Association of American Railways on Freight Loss and Damage, 1948, issued at Chicago on May 2, 1949, which includes a statement by the American railways in which it distinctly says that it is reported by 128 carriers representing 95 per cent of U.S., Canadian and Mexican mileage, and the statement for loss and damage for 1948 is I believe equivalent to some \$135,390,664 in freight claims. Now, they have got that divided here in connection with fresh fruits and vegetables and the

figures they give show that 15.2 per cent of that total of \$135,000,000 accrued against fresh fruit and vegetables, while all foods, packaged, not otherwise specified, which would include even coffee, you might say, or any other packaged grocery line, is a total of 5.7; in other words, it is only practically one-third of fresh fruits and vegetables. It is true, possibly, that there is a greater volume of fruits and vegetables transported, but on the other hand the ratio, the comparison between the two, is very, very outstanding.

Q. From your own experience as a traffic man, in your own company, would you say that the loss rate on the railway, damaged goods or anything of that nature, on your canned products, would ever be as high as this 5.7 per cent which was the average for food products in the States?

A. No, not anywhere near that.

Q. Would it be half of that?

A. Frankly, I do not think it is 1 per cent, ours.

Q. Then in the brief which was submitted there is a statement made, and I would like you to tell me if it expresses your opinion. On the sixth line of page 3 of the brief it reads:

"We feel that over a period of years the lower eighth class carload rating accorded fresh vegetables has discriminated unfairly against our industry. The improvement in dry and cold storage warehousing facilities now makes it possible to bridge the off-season months following the growing season, and has resulted in competition from fresh vegetables that did not exist some years ago."

What is your comment on that statement?

A. Well, all you have to do is to go back over a

period of years and figure for yourself. It is quite apparent, in connection with the development that has taken place in cold storage facilities in connection with the marketing of vegetables you might say almost practically twelve months of the year, as compared with that which was accorded years ago, when there were practically no such facilities, and, not only that, but the scientific knowledge of maintaining and keeping the foods, with the result that these goods, a lot of these goods, move at 8th class rate. They are stored, and at the same time we process the goods, for the purpose of according protection and merchandising the goods throughout the year. At the same time, when we can the goods for that particular purpose, so they can be merchandised throughout the year, we pay a considerably higher rate, with a greater risk to the carrier.

Q. I notice in the brief it is mentioned that the average canned food carloadings are much heavier than fresh vegetable carloadings; what do you say as to that?

A. Well, I do not think there is any doubt about that. In the first place, as far as cars of canned goods are concerned, you can load possibly 50,000 or 60,000 pounds a car, into a car, whereas canned fruits and vegetables definitely will not load, not only on account of the weight, but where there is refrigeration or ventilation required it can be loaded only so high, so as to provide for the necessary safe carriage of the goods through proper ventilation.

Q. Then, Mr. Caldwell, will you turn to Exhibit 2 in the brief, which is the one where the page pulls out, and which comprises five columns. As I understand it, the first set of five columns at the top give the rates from Vancouver east, and the bottom set of five give rates

from Kelowna, which is an interior point in British Columbia?

A. That is correct.

Q. Then, looking at this Exhibit 2, from Vancouver east, canned fruits and vegetables, in the first list -- you are more familiar with it than I am; I do not want to lead you -- would you refer to the points you wish to make by indicating the items there to indicate or support your view that the canned goods are being discriminated against in favour of these other products in their classifications and carloads?

A. Well, they are practically all items -- well, even as far as apples are concerned. There are apples canned, many thousands of cases of apples canned for the bakery and restaurant trade, but, on the other hand, the bulk of these things all compete directly with canned goods, canned fruits and vegetables, but there is only one particular item in the whole of the phase here -- say, for instance, Vancouver to Calgary, where the earnings on a car from Vancouver to Calgary based on these minimums is less than what it is on fruits or vegetables -- not vegetables, but fruits; but on the other hand, while these fruits only load say to these minimums, because you cannot load much more than 35,000 pounds of pears or apples in a refrigerator car, which is required, or fresh fruits up to the extent of 24,000 pounds, our records indicate that, while that minimum is only 24,000 pounds, the actual loading in connection with the traffic from Vancouver to Calgary, the minimum during the period of the calendar year of 1948 was equivalent to 35,730 pounds, which of course would put the earnings on canned goods in the entire exhibit much in excess of those of the carload earnings on other lines

of fresh fruits and vegetables.

Q. Then in your column headed "Fresh Apples & Pears", on a 35,000 carloading, to Calgary, I notice the rate is 1.04, and that that is the identical rate on canned fruits and vegetables?

A. That is the 5th class rate, yes, sir.

Q. So that I understand that they are moving at the same rate?

A. That is right.

Q. From Kelowna to Calgary. Then in the fourth column, on fresh vegetables, from Vancouver to Calgary, they are moving on a 61-cent rate?

A. That is right.

Q. What would that classification be?

A. That covers 8th class vegetables as shown in the Canadian Pacific tariff No. W-22, C.T.C. No. W-4106, while the next item there, which is also vegetables, includes citrons and melons in with the vegetables.

Q. That is the last column, the 76-cent rate?

A. Yes, sir.

Q. So that, as I understand this, the fresh vegetables in various classifications can be moved from Vancouver to Calgary, and, looking down the fourth and fifth columns, easterly right through to Winnipeg, at rates considerably less than when they are processed and packed in cans?

A. That is true.

Q. Now, I notice in that first column, canned fruits and vegetables to Winnipeg, that you have got a minimum carloading of 60,000 pounds and the rate of 1.53, and in the fourth column on fresh vegetables you have got a minimum of 30,000 to 40,000 and their rate is 1.02, and moving over to the last column, fresh vegetables, which

I understood you to say would include melons, at 1.10, and the minimum has dropped to 24,000 pounds?

A. That is right.

Q. Now actually, on your actual carloadings moving out from Vancouver, from the information you have got, easterly there, are the carloadings on canned fruits and vegetables up to the minimum, at least are they in excess of the minimum?

A. The canned fruits and vegetables?

Q. Yes.

A. Just a minute, and I will give you the figures.

MR. ROBINSON: I mention this, Mr. Chairman, because I understand that as far as the railroads are concerned they establish a minimum for a price, but if there is a consistent loading, as our industry does, away over the minimum, naturally the car earnings are increased; in other words, if they will carry a car from Vancouver to Calgary on a 24,000-pound minimum at a certain rate, and we pack the car up to 50,000 or 60,000, the car earnings are substantially higher.

THE WITNESS: The average car loading as from Vancouver to Winnipeg for the calendar year of 1948 was 74,731 pounds, from the coast, and 70,544 from the interior.

MR. ROBINSON: Q. Both of those considerably over the minimum?

A. Right.

(Page 7250 follows)

Q. Then I should like before leaving that (I am not going to deal with the bottom half) but as I understand the bottom half of Exhibit No.2 carried out the same rates. By the way, you have checked these rates and found that these are the proper rates?

A. Those rates have all been checked and the tariff authorities are shown at the side or at the bottom of each group.

Q. Now I understand that the second half from **Kelowna**, the interior of B.C. without going into them in detail that in fact we get the same result as in the top. That is the lower rates on fruit and vegetables, a second classification as against canned goods. After you process them it costs you more money to move them?

A. That is right.

Q. Then would you look with me please at the next page, Exhibit 3, which is the last exhibit and it is in two pages, Exhibit 3 on page 2 first. As I understand page 2 of Exhibit 3 that is a statement showing classifications and tariffs of the third, fourth, fifth, and eighth classes from points in southern Ontario to these various points to Winnipeg right through to Edmonton?

A. That is right.

Q. And that the dollars and cents set out below them are the rates reduced to dollars and cents after they were taken on that classification without reference to any special commodity rate?

A. In cents per hundred pounds, yes.

Q. Then if you would turn back one page, that is page 1 of Exhibit 3; as I understand that, it is the actual amount that is being paid to move these various classes of articles in the first column, canned fruits and

etc. which is the product of the Canadian Food Processors to the same distances, to Winnipeg and Edmonton.

A. That is right.

Q. And then we have the other columns set out opposite. Now as I read this Exhibit 3, pages 1 and 2,-- and I look at page 2-I find that on fresh fruit with the No. 3 rates the Winnipeg price is \$2.15. Now that would be -

A. That would be the third class rate, yes sir.

Q. The third class would be \$2.15?

A. Yes sir.

Q. And when I look at page 1 I find that what is actually being paid there is less than that?

A. That is right - \$1.51.

Q. That is in which column?

A. In the third column under the heading of "Column 22", which is the column number shown in the tariff.

Q. The third column, the top figure - \$1.51?

A. That is right.

Q. Now your heading there is "Fresh Fruit Classifying 3rd Minimum 20,000 lbs." Now if we compare the classification apparently it should be \$2.15?

A. Yes, the original classification of Classification No. 19?

Q. Well how do they get it to \$1.51?

A. Well, they publish it in the form of a Special Commodity Rate.

Q. They get that Special Commodity Rate and actually they are paying \$1.51?

A. That is right.

Q. Then looking at Exhibit 3, page 1, - - I am dealing only with the top line. The others I think are indicative of the same - - we get a canned fruit and

vegetable rate from Toronto to Winnipeg of \$1.38 with a minimum loading of 24,000 pounds, and then I notice that apples and pears fresh with a minimum of 30,000 pounds actually pay \$1.21. I understand they can be moved for less money from Toronto to Winnipeg than a case of canned goods?

A. That is right.

Q. And looking at the 4th column (we have dealt with the third) vegetables, fresh or green \$1.21 which is less than it would cost to move them in cans and the fifth column, vegetables fresh or green, not potatoes, classifying eighth with the same minimum loading of 24,000 pounds that they can be moved out there for 97¢?

A. That is correct.

Q. And am I correct in my understanding that if you put those same vegetables in cans to move them out it costs \$1.38?

A. \$1.38 all rail. That is prior to October 11th.

Q. By the way, these figures here I might make clear; I understand you have not taken into account a recent increase?

A. No sir.

Q. You have used the basic rates and that any increases that have been made would be equal on all the rates and would make the disproportion that much greater. I think that was made clear by the evidence of a witness here previously, in the last matter, which would apply here and the difference would be even greater. Now as to carrying canned foods and products from Ontario out to Winnipeg, does the railway have to give you any particular or special type of car or is it an ordinary box car?

A. Well, an ordinary box car for canned goods for seven months of the year suffices. During the winter months you would have to have a refrigerator car with heaters to keep it from freezing up, depending on the weather, whereas fresh fruits in practically all cases would have to have a refrigerator car that was either heated or totally refrigerated.

Q. Then comparing the two over a period of twelve months, would it be more or less expensive to take a car-load of canned goods from Toronto to Winnipeg, on the railway, than it would fresh vegetables?

A. In my opinion it would be considerably less.

COMMISSIONER INNIS: Are the refrigerator charges included in these rates?

A. In which rates?

Q. In the rates you are quoting.

A. Fresh fruits and vegetables?

Q. Yes

A. No sir, but that is all added; the same way with the heater.

Q. So these rates are really not comparable unless you are to add it in?

A. You still have to add on the expense of the refrigeration and, of course, many vegetables simply require ventilation, but they have to have a refrigerator car either winter or summer.

Q. You made no attempt to add those on to bring this up to some sort of comparable level?

A. Well, after all, as far as that is concerned, carriers would still pay the added expense of supplying ice. They would be under that additional cost and they maintain that they are practically only getting their cost out of the refrigeration, and also the heating of a

car. So after all, it is net transportation we are working at and any additional expenses there would only be additional expense anyway on the carrier. That is plain out-of-pocket expense.

Q. I am thinking of the shipper?

A. Well, of course, a shipper may take the supply of the initial icing and it may be iced entirely by the carrier.

MR. ROBINSON: Then I would like to direct your attention to the last clear paragraph of page 5 of the brief where it is said that :

"Grain is classified eighth class and carried at special commodity rates, when processed for human consumption many of the processed products, notwithstanding their enhanced value, such as cereals, flaked or shredded, toasted wheat, oats, rice, all puffed, and rice rolled and toasted, together with flour, including biscuits, cake, pancake, all of which have added ingredients, are carried at the same as grain classification, or lower, where special grain rates are in effect. On the other hand fresh vegetables take eighth class when shipped as fresh vegetables, but when processed and canned they are raised to fifth class carload."

Now then, on the above statement I am not going to ask you to give all the references unless any of my friends in cross examination wish you to substantiate the statement, but generally have you checked and verified that these products of grain such as cereals, shredded and flaked, toasted, rice puffed, rice flaked and so on, have you checked and verified^{ed} that those are being carried at the eighth class rate?

A. I have.



MR. SINCLAIR: We might as well have it right on the record. There are so many exceptions. For instance, cereals flaked or shredded are subject to fifth class. Item 39, freight classification No.19, page 58,.

A. You are taking the classification but I would refer you to page 68, item 68, and the exceptions to the Canadian National tariff see C.M.124, C.T.C.1721, C.P.R. Tariff 1350A, C.T.C.E. 4595, which provides that flaked or shredded, toasted wheat, rice puffed and rice rolled and toasted oats, puffed or straight, in mixed car loads ^{4th to 8th} class rates. That is under the heading of "Cereals, Flaked or Shredded - Toasted". The same thing in connection with Western Canada is shown -

The CHAIRMAN: Pardon me, what is the meaning of that expression "fourth to eighth class"?

A. Fourth class less carload lot, eighth class carload.

MR. SINCLAIR: That is the difficulty here, Mr. Chairman. There is general statements in the brief that he says will be taken notice of subject to cross examination. If we are going to have that on the record and if we do not cross examine, if my learned friend then says we have taken that as correct, we are going to be here for literally hours on this matter. Just because we do not cross examine on some of these materials that are going in, does not mean that we are to be taken as agreeing with it, and I do not think my learned friend should make those statements. My instructions are that some of those general statements - well, generally speaking they might be right but there are so many exceptions and

provisoesand conditions that we would have to go into the thing in a most detailed way, to see whether there is any difference between us and the witness with regard to some matters, or whether it is just a matter of language or whether we are at cross purposes, I do not know, but the freight classification is a very complicated matter and all I say is that if we have to go into all of that, we will be here literally for hours with that witness.

A. After all, I am only quoting from your own tariffs and giving the authority in each case.

MR. ROBINSON: You have quoted the Eastern tariff?

A. The one that covers Eastern Canada.

MR. O'Donnell; I might make a similar observation to those made by my friend, Mr. Sinclair, with respect to the freight classification No. 19, C.T.C.983, which you mention at page 2. At the bottom of page 2 there are statements in there which on my instructions are not correct either, and I agree that as circumstances are, to check them all individually would take some time. For instance, machinery is said there generally to be sixth class. That may be correct with respect to certain machines but there ^{are} again many, many exceptions. Some machinery is fourth class, some fifth class. Then railway equipment, frogs, etc., are said to be seventh class. That again is not correct; frogs are sixth and so on and so on. I would just like to draw the attention of the Commission to these general statements and to say that they are subject to many, many exceptions. You can't take it as indicated.

THE CHAIRMAN: How far are you going to go into any of these particulars and does it serve any useful purpose? Mr. Covert, having regard to our duty in

respect of this which is to arrive at matters of principle, are we getting very far?

MR. COVERT: I think when we get into particulars we may be, Mr. Chairman. This is what I considered this brief boiled down to in a nut shell and I made a summary of it at the time. They state that there is an entire revision of the Canadian Freight Classifications that they urge, creating additional classes similar to those in the United States. That is their first point, as I understand it. The second is that such revision give greater consideration to (a) the fact of the value of goods and (b) the liability assumed by the carrier in transportation. Now I would say that that does come within the scope. We might recommend that the Board of Transport Commissioners look into it.

THE CHAIRMAN: But the point I have in mind, is, how far are we to listen to particulars in order to be enlightened on it?

MR. COVERT: My lord, I think that it is a question of saying "if they indicate that there is an anomaly - ". They think there is but proper weight is not given to certain things. Now they have given some mention of that, and the brief is before us and we might say:

"Well, you have proved before us that there is an anomaly" --

and they might say: "Well, this is going to be affected by cross examination and we want to go further". It is very difficult to say - For instance, they have included the factor of the value of goods. While it might be shown again that that is so in that classification 7, that you can take exceptions, and it would be

impossible perhaps to have a classification that you would have the same value given all over. It is just a question of how far we want to go.

THE CHAIRMAN: One of the points in this is that the brief sets out certain facts and gives certain figures and if we heard nothing else, we will have to assume they are correctly set forth, the facts and the figures. Now as we go along, Mr. Sinclair, on the one hand, and Mr. O'Donnell on the other point out that these facts and figures are not correctly stated. Would we be further ahead if we simply had cross examination on the whole brief? You see it is rather confusing to us here, somebody saying "Bage so and so is not right".

MR. COVERT: My understanding of what they really say is that the statements are too general, that there are a whole lot of exceptions.

THE CHAIRMAN: Do you know anything about that? Have you seen any figures on it? Have you any knowledge of it?

MR. COVERT: As to whether there are exceptions?

THE CHAIRMAN: Yes.

MR. COVERT: Yes, it has been indicated to me that there are exceptions, but I had understood that, generally speaking, as I say, subject to those exceptions that they are correct. Now, the whole point, it seems to me, Mr. Chairman, is whether it can be regarded as perhaps an anomaly this point of the factor of value of goods. We could go on hearing evidence forever.

THE CHAIRMAN: Yes, you see there are so many commodities, Mr. Covert.

MR. COVERT: Yes.

THE CHAIRMAN: And classifications. When you touch one commodity you affect others, so just what useful purpose is there in going on at very great length, all about one commodity? We have the three matters of principle which come out of the statement. We have this and I wonder how far we might proceed usefully in getting more detail?

MR. COVERT: I don't like to restrict anyone, but I don't think that the actual detail in the difference in the rate - and they have sought to establish and I think perhaps they have established, in a broad way at least, that there is - at least that is their argument that there is a difference between canned goods and fresh vegetables, and it is purely a matter of how much more evidence you would want to hear on that.

THE CHAIRMAN: Well, is it a fact that some of the facts that you state in your argument, Mr. Robinson, are subject to so many exceptions that they do not really describe the situation properly? That is what we are told by Mr. Sinclair and Mr. O'Donnell.

MR. ROBINSON: I understand, Mr. Chairman, from Mr. Caldwell who checked these figures, and with all due respect, I think he is pretty good at that, that the schedules that have been taxed, not only the prices that have been given for rates but in every case also the tariff and the C.T.C. reference, so that it is not a question of making a broad general statement; it is a question of saying: "There it is and there is the page in mind and that is the conclusion".

Now I think that those, subject to any of my friends saying that there is something wrong in the printing of

it, or an error in the tariff references, subject to that I do not think we should have any quarrel on the exhibits, as to the facts and the rates set out. I think we can agree on that. I am not asking them to agree but I do not think they will quarrel with me on those.

MR. O'DONNELL: I think we are talking at rather cross purposes when we get into five schedules. This is exactly as I said, they deal with special commodity rates and exceptions to general rules. What I understand the representation made to the Commission is that there should be a revision in the freight rate classification. That is a different thing altogether than talking of special commodity rates and it was with respect to that that I intervened in the first instance to say, that under the law as it stood at the present time, the Board of Transport Commissioners has continuing jurisdiction, and is constantly making changes in the types of classification, as is proper under section 322. They might from time to time place any goods, if the Board are satisfied, in any set class, or remove them from any one class to another class, higher or lower.

THE CHAIRMAN: What are you reading from?

A. 322 of the Railway Act. They are constantly doing that but it is different to talk of general freight rates, than to talk of any particular article such as canned goods in detail.

THE WITNESS: Pardon me, you are wrong there.

MR. O'DONNELL: The freight rate tariff is a printed document and in 1937 the classification to the present extent came into effect. They have been there now for twelve or thirteen years, and anyone is

free to make an application to have the rates on its particular commodity changed. As you remarked, Mr. Chairman, when you change one commodity from one class and put it in another, you might disturb ratings that you know to be justified. Consequently, it is a very complicated, intricate problem, and to deal with details at this stage would not get us anywhere. If the association, as is set out in the concluding paragraph, recommend that there should be an entire revision of the Canadian Freight Classification giving greater consideration to the value of goods and responsibility assumed by the railways and transportation, well that suffices, I think, for the purposes of the Commission on this point.

MR. COVERT: Mr. Chairman, I think we might clear that up right away. I did not take it from the brief or Mr. Robinson's presentation that they were asking this Commission to change the classification, or to urge the change of their particular classification. Now if they are, that is one thing. My understanding was that they made it clear that their submission is that we should make a recommendation that there be an entire revision, and that in the making of that revision you should give effect to those two things, value of the goods and the liability assumed by the carriers. Now if they are confining it to one particular thing, I think we should know.

MR. ROBINSON: No, the Commission Counsel is entirely correct in his statement, the earlier part, as to our position. We are not suggesting that this Commission make any recommendations on our case particularly at all, but what we are endeavouring to do is to say: "Here is a situation indicative of certain things

which we say exist in the entire rates structure and classification, and we suggest to you that the entire structure be given further reconstitution and that these matters, the value of goods and the rest of the matter, be given their proper position in bringing it to that conclusion". And we are entirely satisfied that if that were done, we with others, would receive our proper classification. We are not suggesting that this Commission recommend anything particularly about us at all, but we are saying: "Here is a case which we think we have made out clearly" and using that as one (there may be many more this Commission may hear) but "Here is one case and we suggest that this will be evidence upon which you can base your recommendations" and we ask that you bear these things in mind. I think that the Commission Counsel has got my point of what has been the purpose of the presentation.

THE CHAIRMAN: Well, your purpose is that you wish us to recommend that there be an entire revision of the Canadian Freight Classification?

MR. ROBINSON: That is right.

THE CHAIRMAN:

" - - creating additional classes somewhat similar to practice employed by the Official Classification in the United States, and such revised Classification give greater consideration to the factor of the value of goods and the liability assumed by the carriers in transportation -- "

Are those factors not in the present procedure of present Classification?

MR. O'DONNELL: Yes.

THE WITNESS: To this extent -

THE CHAIRMAN: You say they should be given - -

A. Well now sir, I quote here, for instance, sixth class rate. I have your idea here. I can take a generator or motor or pump and transformer. These are particular items that originate at Peterborough or Hamilton and reach up to thirty thousand pounds and are sixth class rate, and are possibly worth - in many instances they shove them in cars - up to \$100,000. That carrier has a certain limit of liability. He has a limit of liability up to the value of those goods. He transports those goods for actually less money than the carriers carried goods worth 8¢ a pound, and our goods are continually in replacement, that is continuous movement. The goods are consumed and replaced. Now it is true, in connection with value of service that that is not what we are advocating here ---

THE CHAIRMAN: What you are talking about here is the "value of goods" .

A. The value of goods is not entirely new to the carriers. We have them say carrying bullion, They don't carry it by weight; they carry it by value. Their own express companies carry it at \$50.00 and anything over that you pay a premium. They had a supplement which intended to limit their liability on the goods at \$7.50 a pound whereas now practically the sky is the limit, which apparently they withdrew for some unknown reason, and the same thing with other high priced articles where the value of the goods is a considerable factor. Not only do you pay on the value of the articles and weight but you have to pay insurance which is part of the contribution towards transportation to Railways. Your lowly motor carrier in the Province of

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THE UNIVERSITY OF CHICAGO

Mr. Caldwell

Ontario now is required on his Bill of Lading to assume his liability at \$40.00, but the rail carrier will carry these things at first class rate whereas canned goods are carried third class in an L.C.L. proposition, but when it comes to a carload he gives to you an extra consideration of sixth class, and notwithstanding the fact of the consideration ^{that} you had less than a carload lot.

COMMISSIONER ANGUS: To your Association it would be satisfactory to you within the scheme of the present classification if you simply moved the classification on these goods.

A. Well, not only that sir, but there is of course a considerable number, a number of commodity rates that are put in special tariffs that bear relationship to the clause. Now in many instances if there is some revision - now I say exactly the same as the Commission Counsel said, that the rates should be the same as they are in the United States, and have a similarity with the greater number of classes and grading of different commodities, according to what they should be, and whereas at the present time we have got that confined to ten.

Q. Is that greater number of classes needed to give you the relief you want?

A. I think so, and after all we have to stand entirely on our own feet. For instance, we have a machine company, or say, for instance, we move instruments back as part of a concrete case.

Mr. Caldwell

Say, for instance, we move the instruments back. We will say we move the instruments back on the Canadian National Railways on the P and D basis. The retorts and cooking machines go back to the engineering department for the purpose of testing so that they can go on the machines and be accurate. We moved a consignment there weighing 1300 pounds, with a value of \$6,000. Out of curiosity I figured it out, and I think it was one-sixteenth or one-seventeenth of one per cent of the value was paid in transportation. It is absolutely no factor at all whereas they possibly could have had considerably more without any effort.

Q. I might be able to finish, Mr. Chairman --

THE CHAIRMAN: I see Mr. Sinclair standing up.

MR. SINCLAIR: You asked me a question, and apparently it has resulted in that. I could not follow the witness. It was too fast for me.

THE CHAIRMAN: I think, Mr. Sinclair, if we have an hour and a half to reflect on these things it will help.

---At 1.00 p.m. the Commission adjourned to resume
at 2.30 p.m.

(Page 7275 follows)

AFTERNOON SESSION

Friday, November 4, 1949.

---The Commission resumed at 2.30 p.m.

W. R. CALDWELL, recalled.

EXAMINATION RESUMED BY MR. ROBINSON:

Q. Mr. Caldwell, when we adjourned we were dealing with the paragraph in which reference was made to grain as being classified 8th class, and grain products in the submission of the brief were classified under an 8th class rate, and you have given to the Commission certain references from the classification tables to support that conclusion; had you completed those references?

A. Well, the reference I gave applied to all points east of Fort William and Port Arthur where the 8th class rate applied to cereals; the item dealing with **points** in eastern Canada to points in western Canada is defined as cereals, flaked, shredded or toasted, wheat, oats, rice, all puffed, rice rolled or toasted, all 8th class carload, subject to a carload minimum of 24,000 pounds in Canadian Freight Association tariff 5-H, supplement 131, Canadian Transport Commission reference No. 1292.

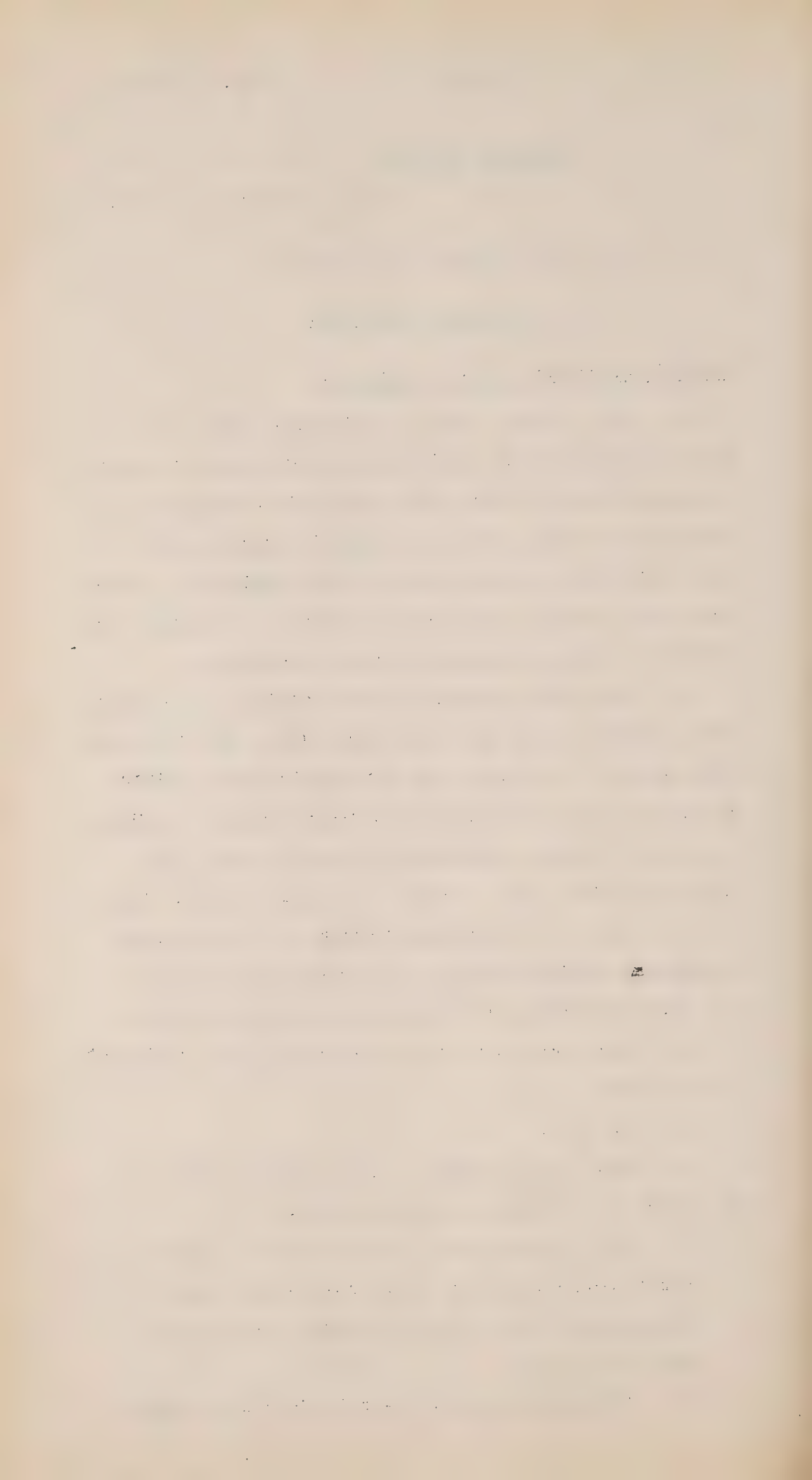
Q. That completes your references on this statement in the brief?

A. Yes, sir.

Q. Then, leaving that, in the brief on page 5 in the middle there is this statement made:

"It is interesting to note here the remarks of Commissioner McCaffey of the Interstate Commerce Commission; in the Western-Southern class rates 266, I.C.C. 534.

'Transportation of class traffic has changed



vastly since this system of rates and classifications was devised. Motor transport has become important and has taken much of the business. Instead of attempting to meet this competition by rate reductions as such, or by all commodity rates available to a limited class of shippers, and forwarder operations, it is my view that what is required is a thorough revision of the entire basis of rate making on this traffic. Such a revision is only delayed by further attempts to patch up out-moded structure.'"

Now, do I understand from your evidence this morning that you subscribe to this view as applicable to the Canadian rail situation?

A. That is true.

Q. That it is an outmoded structure and that it should not be patched up but the entire basis of the rate-making should be revealed?

A. That is right.

Q. Then in the concluding part of the brief, the second paragraph on page 7, this statement was made:

"Our problem then, to a degree, parallels that of the railways and substantiates the basis of our appeal to the extent that if we are to maintain our volume, lower prices, and meet outside competition, then we must have a classification of rates consistent with the burden which the products we merchandise nationally, and export to the world markets, will bear.

We feel that the whole burden of transportation rates and tolls should be more equitably distributed and suggest this can be accomplished if commodities of a permanent nature and relatively high value

carry a classification that more accurately reflects their true position in the general movement of traffic. We are not critical of the railway policy in this respect. Price ceilings imposed on their rates, and more recently the hearings before the Board of Transport Commissioners and the present inquiry, may have prevented any contemplated action they intended to initiate.

In conclusion, we are strongly of the opinion that this Commission should recommend the entire revision of the Canadian Freight Classification creating additional classes somewhat similar to practice employed by the Official Classification in the United States, and such revised Classification gives greater consideration to the factor of the value of goods and the liability assumed by the carriers in transportation. As we have pointed out, it is most inconsistent and unreasonable that articles of more permanent nature, value, risk and liability, are carried by the railways on the same or lower basis, as many other low-priced commodities, including the products of our Association."

Do you subscribe to those --

THE CHAIRMAN: Pardon me, Mr. Robinson. In that part of your brief, the sentence beginning, "Price ceilings imposed on their rates" -- just what do you mean by that?

MR. ROBINSON: My understanding is that the reference is that during the war period there were certain fixed rates, and that any contemplated revision the railways may have wished to initiate within themselves clarified that position -- that they would have been prejudiced

at the time; that was one of the things.

THE CHAIRMAN: Well, has that gone by now?

MR. ROBINSON: Yes.

Q. I understand, Mr. Caldwell, that you subscribe to the views as expressed in the concluding paragraphs of this brief that I have read?

A. I do.

Q. That is all.

THE CHAIRMAN: Any questions from anybody?

MR. EVANS: I had only one or two questions.

I may say at this stage that I did not intend that we should cross-examine this witness on the detail of his brief, not because I want to be taken as admitting that all of the facts he asserts are true as generalities, or because I accede or agree with the conclusions that may be drawn in the brief from those facts; but there are one or two questions that I did think I would put to Mr. Caldwell.

CROSS-EXAMINED BY MR. EVANS:

Q. Mr. Caldwell, are you aware of the judgment of the Board in 1925 when they were last considering the question of classification?

A. Well, I may have read it; that is a long time ago.

Q. Do you recall this paragraph from the judgment -- I am reading it to you from the report in volume 15 of the Judgments, Orders, Regulations and Rulings of the Board -- I am sorry, I have the C.F.A. number. The C.F.A. number is 1342; the J.O.R. & R. reference is volume 15, page 177, and the portion that I am reading comes from page 3 of C.F.A. 1342:

"On matters affecting general rate changes, the Board has more than once drawn attention to the

fact that it is an advantageous procedure to exhaust the methods of conference before turning to the Board. Such procedure clarifies and defines the issue, and by bringing to the Board for its consideration the irreducible minimum of grievances the matter can be more clearly and expeditiously dealt with."

Now, the question I wanted to ask you, in the light of that passage, was this: Have you or your Association approached the Canadian Freight Association or the railroads individually with a view to attempting a conference designed to arrange a reclassification of the commodities that you have been speaking about?

A. Well, I would say off and on over the last twenty-six years that we have been continually after adjustment in freight rates.

Q. When was the last time, Mr. Caldwell?

A. Well, as a matter of fact, I guess only a matter of two or three months ago we were trying to arrange a meeting with the vice-presidents; they could not meet up with us.

Q. You wanted to discuss with them the question of the rearrangement of the classification?

A. Rearrangement of the freight rates, on which the classification has a bearing.

Q. Did the communication indicate that you had in mind a change in the classification?

A. That was one of the things.

Q. Was it in the letter?

A. No, it was not in the letter. As a matter of fact, we never determined exactly what we were going to discuss, only in connection with the burden under which canned goods are carried today.

Q. Would you tell me when was the last time you asked specifically for a change in the classification?

A. Well, I cannot say as to that, not specifically the classification, no. It was adjustments in connection with freight rates, on which the classification has a bearing. But the tendency has not been to getting the rates down; they have been on the up-grade all the time.

Q. Now, you mentioned machinery as something with which to compare the product such as you are producing; are you aware of the large number of items under the heading of machinery and machines in the classification?

A. Yes.

Q. There are about eleven or twelve pages?

A. Yes, that is right.

Q. And there are some of those items that are classified 5th 6th, 3rd, 4th, 2nd -- those are the classifications --

A. Are those all carload ratings?

Q. Carload, into which machinery and machines fall.

A. That is right, but, after all, we are taking exception in connection with the 6th class item.

Q. Now, may I suggest to you that if you were presenting the whole picture you would have taken all the items in the 5th class to compare with canned goods, and would have compared their values and their weights and their bulk?

A. Well, I tell you frankly, it is an impossibility for anyone to get all carloads of machinery that are transported. It is only from actual knowledge of what you know that is being transported as to comparative values concerned, but to pick out all the machinery items that move and to figure out the value of the individual

shipments is impossible for any shipper. You possibly have a better answer to that than we have.

Q. I am merely suggesting to you, Mr. Caldwell, that the question as to whether, for example, canned goods should be in 5th class or some other class may involve not looking at one of the items that are in 5th class or 6th class, but looking at the literally hundreds of items that fall within that 5th class and making value comparisons, weight comparisons, bulk comparisons and other conditions under which they move. I do not want to be unfair to you; I think you as a traffic man agree that that is an essential aspect to be looked into?

A. That is providing there is no other -- after all, machinery competes with machinery. As far as canned foods are concerned, or foodstuffs are concerned, foodstuffs compete with foodstuffs.

Q. Then you go on to make comparisons with all foodstuffs falling within 5th class, wouldn't you?

A. We would be glad to do that. I think you will find that the canned goods pay their share with all the other kind of goods.

Q. Well, I would not argue with you on that, because I have not gone into it; but I am suggesting to you it is one of the things that must be done in determining whether an anomaly exists, to look at all of the items in each class and to find out the particulars of value and weight and bulk and all the other factors that are taken into account and make comparisons before you can determine whether in fact there is an anomaly in your case.

A. Well, as far as we are concerned, we do think it does exist. I think myself it is quite apparent, because, after all, you take a ton of earth and a ton of beans, for instance, or whatever you want to say; as far

as you are concerned, it costs you identically the same to move those between two given points, but what you pay on the beans you could not pay on the earth, because the earth is not worth it. On the other hand, if you lost the earth you would pay practically nothing, whereas in the case of the beans you pay on the value of the beans, and naturally the beans can stand a higher rate than the earth could.

Q. I think you and I probably would agree on general principles, but what I want to suggest to you about that is this, that you do not find articles of exactly the same value in the same classes in the classification, do you, because it is inherently impossible that you should find that?

A. Articles of which?

Q. You won't find that all articles in each class are exactly of the same value; you find a wide range of value in each class, don't you?

A. I said myself that is one reason why there should be some revision so far as the classification is concerned.

Q. That is your view?

A. That is right.

Q. I am saying that is one of the considerations that you would have to examine if you were going to look into the question as to whether the classification could be changed; you would have to look at all these commodities and you would have to consider, I suggest to you, the effect on the movement of a lot of commodities before you could generalize as to whether a change in the classification generally should be made?

A. Well, I think myself if the railroads are directed by somebody to do that, I think myself in the end it would

work to the advantage of the railway company, because there are undoubtedly hundreds of items in that classification that are not at the present time contributing their proper share?

A. Well, I am not going to argue with you, Mr. Caldwell. I am merely suggesting to you this: have you been advised, or are you of the opinion independently, that you cannot obtain or have no hope of obtaining any relief from the Board of Transport Commissioners under the legislation as it now stands?

A. No, I have not been advised of that at all.

MR. O'DONNELL: I have no questions, my lord, other than to say this, that, while there may be something requiring adjustment on proper study of all the pertinent factors, the law as it presently stands, particularly in Section 322 of the Railway Act, seems to provide all necessary machinery for such an adjustment. Moreover, even at the present time, in virtue of Order in Council P.C. 1487, ordering the general freight rate inquiry, the matter has already been attended to, and in the circumstances there might be no need for any further dealing with it. I might also indicate that, despite the classification of which Mr. Caldwell speaks, the 5th class rate, there are a number of special rates, commodity rates and other competitive rates, that are allowed to food processors at the present time.

THE CHAIRMAN: There are what?

MR. O'DONNELL: There are a number of rates that are allowed to the food processors.

THE WITNESS: Where are they?

MR. O'DONNELL: Q. Well, there is a commodity rate, is there not, between Quebec and Ontario origins,

within those provinces?

A. Between jobbing points in Quebec. All the rates to the Maritimes have all been eliminated.

Q. That may be, but at least in the Province of Quebec and in Ontario you have a commodity rate?

A. We have one from Ontario to Quebec.

Q. And you also have water competitive rates that are permitted to you, you have rail, lake-and-rail rates to western Canada, and you have transcontinental rates, all of which are special concessions; that is the fact at the present time, isn't it?

A. Well, they are compelled.

Q. They may be compelled, but you have the benefit of that; that is all I am saying; that is correct, is it not?

A. That is right.

Q. Thank you.

THE CHAIRMAN: Well, apparently the point put forward here is this, that the time has come when there should be a revision of all the classifications in the freight rate structure, and this case is brought before us to illustrate -- I am not saying at the present time whether it does illustrate or not, but it is brought before us to illustrate -- the necessity for the classification, which dates from some years ago, being gone into all over again, having regard to the change in the nature of products manufactured, change in values, and everything else. The point is, does this case present us with an instance of something that is wrong?

MR. EVANS: May I ask that?

THE CHAIRMAN: Yes, I would be pleased if you would.

MR. EVANS: May I ask this: the classification

will, of course, require revision from time to time. It always has been revised.

THE CHAIRMAN: Has it, generally?

MR. EVANS: Yes, there have been revisions from time to time.

THE CHAIRMAN: When was the last one?

MR. EVANS: The last general revision was in 1925, in the judgment of the Assistant Chief Commissioner to which I have just referred. There have, however, been changes in a great many cases made in individual cases by the Board, and my position is that the railways, as far as I represent them, have no desire to suggest that there need not be changes or that anomalies cannot be found. What we do suggest comes under two headings. In the first place, there never has been a suggestion, and the witness says he has no opinion or advice, that the Board lacks power. In the second place, the Board has said in the judgment to which I have referred that it is in effect a complicated issue and it is desirable that as many of the issues as possible be defined as a result of conference, before the Board is asked to deal with these questions, and this witness has said, "I have not recently asked the railways for a change in the classification."

Now, I suggest to this Commission in all seriousness, and without any intention of obstructing my friend, that the way to do this is to accept what the Board has laid down, have your conference, find out what the issue is, find out how much relief you can get in the ordinary process of discussion, exhaust your remedy with the Board, and if you find the Board has not adequate power to deal with your complaint, then the time would come when they might ask your Commission or any other

Commission that may be sitting at the time to change the law or to consider whether some direction to the Board is necessary; but it seems to me fundamental that it is asking a good deal to ask this Commission to direct the Board to do something which it has never refused to do and which it does as a matter of course and has full power to do.

THE CHAIRMAN: Do you understand then, by what you have just said, that these applicants are asking us to direct the Board to do something for their commodity? Is that what you understand?

MR. EVANS: Well, in the last analysis --

THE CHAIRMAN: Because I do not, you see. That is not what I understand. I understand, as I said, that their contention is, and it is quoted here, as they cite other people, that the time has come for a general revision of the classifications now existing, and they give this case as an instance. They want something done of a general nature; they are not asking us to direct any Board to give them relief.

MR. EVANS: I do not suggest that. My point is merely this, that they have under way today a general inquiry, and no one could suggest that the Board lacks the power, and, whether there is a general inquiry or not, the Board would hear applications from anybody suggesting that there should be a general revision of the classification. As a matter of fact, history shows that general revisions in the classification have usually come about from freight investigations. There is no reason in the world why this group, either alone or in conjunction with any other group, should not ask the Board to make a general revision, and I do not think you would find any railways opposing it. But my suggestion is that under cover of

attempting to get their own classification revised they suggest that a general revision is necessary, and my suggestion to this Commission is that you could reach no conclusion that a general revision is necessary by reference to only one commodity. But, in the last analysis, they have not exhausted the remedies that are open to them.

THE CHAIRMAN: Mr. O'Donnell, have you anything to say?

MR. O'DONNELL: I agree with that.

THE CHAIRMAN: Have you anything to say, Mr. Covert?

MR. COVERT: There was one question that I really wanted to clarify with the witness, and then I did want to make some observation about what has just been said.

EXAMINED BY MR. COVERT:

Q. I take it, Mr. Caldwell, that you do not suggest that you could work out a freight classification based entirely on value, do you?

A. No.

Q. In other words, you do not have to take in elements such as weight, bulk, density and perishability, and perhaps marketability?

A. Yes, there are other factors, but value is an important factor.

Q. Then I would like to ask you, if you thought this was a fair question, supposing you did make an application for a revision of the classification in so far as your products were concerned, that perhaps would not achieve the object which your brief recommends here; in other words, for instance, you might be urging a revision upwards of say the machinery classification?

A. Well, I am not advocating any upward revision of any machinery at all. I am just pointing to the

inconsistency of that. I don't care what it is in connection with it, there is an adjustment, if rates bear some relation so far as value is concerned.

Q. But supposing you have a conference, for instance, on your canned goods, I do not suppose that would mean any alteration, for example, in the classification of machinery?

A. No, no.

Q. That is all I have to ask.

COMMISSIONER INNIS: Q. I would like to ask one or two small points. Have you had occasion to study the British Columbia brief?

A. No, I have not.

Q. You are not aware of their emphasis on another principle, namely, the cost of service rather than the value of service?

A. No, I have not seen that.

Q. I was wondering whether there was any organization among the farmers and producers of fresh vegetables and so on, and whether they had ever expressed views on the question which you are raising in this instance?

A. No, I do not say that they have. Of course, there is the Ontario Fruit Growers and the Vegetable Growers Association in connection with that. Of course, we are not asking that the discrimination be removed by raising their rates up.

Q. No, but it does affect their position, their whole case.

A. In what way, sir?

Q. Well, I would think a difference in the relations between --

A. Well, they would both be on a parity.

Q. Well, putting them on a parity changes the relationship.

A. Yes, sir.

Q. But they have no organization nor have they expressed any views on this problem that you are putting forward?

A. I never heard them.

Q. One final minor point. I was wondering whether you had any views as to the scale on which you would propose the revision of rates. That is something which involves enormous problems to innumerable industries, and if it is taken in any sudden sort of way it produces all sorts of complications. Now, have you any suggestion as to how that should be done?

(Page 7290 follows)

A. Well frankly, you cannot discuss that at all until you know the number of classes that there were going to be suggested, and furthermore, what relationship each class had to the other, or say, for instance, the first class rate, and then you would have to know -

Q. But that would involve an investigation over a considerable period of time?

A. Well, after all it possibly can be started as far as that is concerned. I do not know just what is in the minds of our railroad friends in connection with any standardization of rates.

Q. But you have nothing in mind of a revolutionary character, something that is to be gradual?

A. No, I notice from the reference to the official classifications I understand that the classes have gone up - before we have had Rule 25 and Rule 26, and about nine others have been instituted under this official classification, which is the territory of the Northern States, and it would be probably about 15 and they call those different classes. For instance, take rates on canned foods. Well, they are fifth class and they are usually carried at 35 or 37½% of the first class rates. - - - - -

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MR. RAND H. MATHESON RECALLED

THE WITNESS: Mr. Chairman, before Mr. Sinclair starts his cross examination, in page 6905 of the transcript, I made the statement, or I answered to a question in Volume 36 "Yes. Value of service, in my own definition - I don't know whether it fits in - is equivalent to the highest freight rate at which traffic can move. That is definitely speaking of the value of service --"

Mr. Sinclair interjected in the middle of the statement "Under the overall fixed by the Board?" and I answered "That is right -- ". I wish to qualify that answer. It is not necessarily correct to say that is right inasmuch as the value of the service is related to what the shipper would be willing to pay rather than forego transportation. There may be instances in the overall rates fixed by the Board, where that would constitute the demand price insofar as the shipper is concerned. In other words, it is not what the shipper pays--not necessarily what the shipper pays that constitutes value of service. Value of service, therefore, constitutes the maximum and what the traffic will bear is in between and down at the bottom, and is the cost of service, or the minimum cost of service, and as I said before, there are various types of cost of service.

Now with that statement, I think it is most important to have that correction in, Mr. Chairman, because it relates to the whole principle of freight rate making which has already been raised, not only in some of the provincial briefs, but also in the railways' replies.

Now there was an exhibit that we prepared. It was intended to be incorporated in our brief under the Maritimes, but at the time we could not get a photostatic copy in sufficient time but we have already filed a copy, or given a copy, to the Assistant Secretary, and it is a "Distribution of Population in Canada" and it has to relate to our so-called reference to a strip economy in Canada. I do not know whether there is any number given to it. The railway Counsel have a copy. I can send you more

but we only had ten copies completed.

MR. COVERT: That should be given a number then, Exhibit 104.

EXHIBIT NO. 104 filed by Mr. Matheson. Map showing distribution of population in Canada in 1941.

MR. O'DONNELL: The source is not included, I expect?

MR. MATHESON: The Bureau of Statistics.

MR. SINCLAIR: What year?

MR. MATHESON: 1941. We have not brought it up to date because some of the latest figures are not sufficiently specific to do the plotting which was necessary on that particular exhibit.

Now, with reference to a few questions that were put to me by Mr. Sinclair the other day, one pertaining to Agriculture, I refer to page 27 of the publication of the "Maritime Province in Relation to the National Economy of Canada". I do not know whether it is necessary to read this or not but in the third paragraph, on page 27, there is a reference to the agricultural economy of the Maritimes which brings the picture up to date, a little later than the report and finding of the Duncan Commission. With that I am all ready.

CROSS EXAMINED BY MR. SINCLAIR

Q. Mr. Matheson, in a number of places, throughout your brief you refer to the "Rightful place of the Maritimes in the Economic Development of Canada" and said that a reasonably fair participation of the Maritimes is essential. Now, just what are your criteria on which you base a reasonably fair participation?

A. In reply, Mr. Sinclair, I believe if you will remember, in the statistical references in my brief, I refer to various statistical data most of which was obtained from this publication to which I have already referred, which indicates the relative status of the Maritime positions in Canada vis a vis the rest of Canada, a situation which was commented upon by various Commissions, including the Duncan Commission, who indicated, or who pointed out the fact that, relatively speaking, the Maritimes were not as prosperous a state as other sections of Canada, and that, as the Duncan Commission so found, there was a burden placed on the Maritimes up to the period 1925, which it was not intended that the economy should bear.

Q. Those are the criteria that you have reference to?

A. Yes, and what I have further developed within the brief without going into minute detail.

Q. But the ones you have just mentioned are the major ones?

A. Some of the ones.

Q. Major ones?

A. I would not say exactly major; they are some of the ones. It would have to be appraised in line with what I have here.

Q. Mr. Matheson, you would agree with me or wouldn't you -

A. It all depends.

Q. - - That expenditure of capital labour on production that cannot operate successfully without assistance, is a waste of economic effort and therefore a loss to the Nation?

A. You will have to trace this whole thing back, Mr. Sinclair, to conditions and circumstances not only relating to what exist today, but what did obtain in the past, what the situation would have been if certain things had not developed. I have in mind there - I can put it this way, economic sacrifices pursuant to Confederation.

THE CHAIRMAN: You see the Duncan Commission was appointed specially to go into those very things?

A. That is right, Mr. Chairman.

Q. We have the Duncan Commission report and I understand you base your own present opinion pretty largely upon it. Then parliament also adopted the views expressed by the Commission, and insofar as freight rates are concerned, they passed an Act which we are all familiar with, remedying that and granting you special concessions that they intended giving to you?

A. That is right, sir.

Q. Now, do you intend to go back again to these same considerations that actuated the Duncan Commission and to bring them to the fore once more on freight rates?

A. Excepting, Mr. Chairman, in this way, that these freight rate developments or changes in transportation circumstances are taking place.

Q. Since then?

A. Yes.

Q. You say conditions now since that Act was passed, have altered and that the remedy which you thought you were getting then, is not now as entire as it was expected?

A. That is right, Mr. Chairman.

Q. All right, if you will proceed from there, we know where we are.

MR. SINCLAIR: Now, do I understand your answer to

the Chairman to really mean this, that insofar as excessive mileage over the Intercolonial is concerned, that is no longer a fact, because you have the short-line mileage of the Canadian Pacific and also the route of the former Trans-Continental?

A. If I understand your question, Mr. Sinclair you are putting to me that the adjustment that was effectuated by the Maritime Freight Rates Act has taken care of the Maritimes ' problem distant-wise, in relation to the Intercolonial Railway.

Q. What I am asking you is whether the distance factor, the excessive distance, as you term it in your brief is no longer a factor because of the Canadian Pacific short-line and the National Trans Continental. There is a lot in your brief about excessive mileage. I am wondering if we can't wipe it out. Do you not agree?

A. No, I want to give some thought to that, Mr. Sinclair, just to the purport of your question.

THE CHAIRMAN: What are you saying, Mr. Matheson?

A. I would like to give some thought to that question, Mr. Chairman.

Q. I think the point is this. We have been told a great deal about the very long route taken to set up the Intercolonial, and it is true that now we have the National Trans-Continental taking a short cut through the same territory, and we have the Canadian Pacific, and the point is, have not those two lines gone considerably, if not entirely, to removing that particular point of a round about route which was an impedement to progress?

A. Insofar as the Transcontinental is concerned, Mr. Chairman, it has only cut off approximately 33 miles.

Q. It is as short and direct a line as could have

been constructed, isn't it?

A. Without going across the United States border. Well, I would not say it is as short.

Q. There was never any question of building the Intercolonial in the United States, of course?

A. Excepting the original survey that was made by Sir Sanford Fleming was to go through the United States, through the Ashburton Treaty section, that section of the country that was taken away by the Ashburton Treaty.

MR. SINCLAIR: I think the three survey lines are referred to in the history of the Intercolonial, 1832 to 1876 by Sir Sanford Fleming. It is a book that was published in 1876. I have a copy of it here and the history of the Intercolonial and the surveys and maps are all in that volume. The book is a very old one but there are a number of copies; I think there is a copy in the Parliament Library.

THE CHAIRMAN: Have we not then in addition to the Intercolonial the Canadian Trans-Continental which takes as short a route as possible through all Canadian territory, and then we have the Canadian Pacific which does go through the United States?

MR. SINCLAIR: They are the three routes that Sanford Fleming referred to - the Robinson Line, the northern one, the middle route, and the frontier route. Now the frontier route is the survey which was to pass through the United States, but as Mr. Matheson says, it is now part of the State of Maine given up by Canada by the Ashburton Treaty.

COMMISSIONER ANGUS: The point was this - a survey was made?

MR. MATHESON: Yes, the information I have given

from what Mr. Sinclair said, is that the present route of the C.P.R. is the route that Sir Sanford Fleming made.

MR. SINCLAIR: They are all surveys on old maps, -I say generally speaking.

A. There is a question there, Mr. Sinclair, and it may be a matter for argument, but in any event the C.P.R. route looking from the Nova Scotia angle, now goes into St. John and that is a distance of 488 miles roughly, plus 89.3 miles from St. John, New Brunswick to Moncton.

Q. Are you reading from this sheet you are handing to the Commission?

A. No, I am speaking from memory.

Q. I think we might as well let the Commissioners follow this. I handed to Mr. Matheson a computation I made dealing with the so-called 250 extra miles, and that is based on the actual mileage of the three lines now built, the distances taken from the official figures and tables of the Canadian National and Canadian Pacific Railways, and I presumed that Mr. Matheson, most people but particularly Mr. Matheson, would agree with me that Moncton is the hub of the Maritimes, so that any figure that is to Moncton and goes through Moncton into Halifax, the lines would all follow the same route. That is correct, Mr. Matheson?

A. No, I represent the Maritime Trade Commission, and Amherst might be a little peeved if I said that Moncton was the hub of the Maritimes.

THE CHAIRMAN: What were you saying?

A. I said I accepted his statement with qualifications. I represent the Maritimes Trade Commission and some other community might be a little peeved.

MR. SINCLAIR: Well, this computation of mileage I think should be put right into the record:

MILEAGE OF INTERCOLONIAL TO MONCTON COMPARED
WITH MILEAGE OF NATIONAL TRANSCONTINENTAL AND
-- CANADIAN PACIFIC--

Montreal-Saint John	C.P.	487.9	
Saint John-Moncton	C.N.	<u>89.3</u>	577.2
			<u>Extra to Moncton</u>
Montreal-Moncton CN-IC		647.5	70.3
Montreal-Moncton CN-NT		613.3	36.1
Montreal-Moncton CN-IC		647.5	
Moncton-Saint John CN		<u>89.3</u>	736.8 248.9"

and it says that the so-called 250 miles excessive is only secured if you go via the Intercolonial to St. John, and that actually the excessive of mileage is 70 (I am speaking from memory).

THE CHAIRMAN: What about somebody going to Halifax then?

MR. SINCLAIR: Well, no matter what route they built, they go in from Moncton.

THE CHAIRMAN: But that is a different thing, going in by Intercolonial and the other way.

THE WITNESS: 803 miles is the short line from Montreal to Halifax.

Mr. Sinclair; The extra mileage is 70.3 miles.

THE CHAIRMAN: I am saying from Montreal to Halifax.

MR. SINCLAIR: By the shortest route, as compared to the longest route, the extra is 70.3 miles, because as I say here in this little sheet: "Extra to Moncton" so that it is the same thing in or out to Moncton.

THE CHAIRMAN: Now that territory being covered,

and you say it was in that condition when the Duncan Commission made their report, that report held that notwithstanding the condition of facilities, there were still reasons why the Maritimes Provinces were entitled to special consideration. Parliament agreed to that and granted special concessions. Now Mr. Matheson says that conditions have altered, so that the consideration provided by Parliament is no longer adequate. That is what you say, is it not, Mr. Matheson?

A. That is correct, Mr. Chairman.

Q. And you want something additional now. You want changes made?

A. In line with what we consider - If the conditions were anticipated such as the competitive conditions that resulted in upsetting the apple cart, such as the benefits accruing from the Maritimes Freight Rates Act and competition with the horizontal freight rate increases, we are saying that if these had been envisaged, perhaps the Duncan Commission might have made provision to take care of such a condition.

QA. In other words, you think that Parliament now should be asked to reconsider it?

A. That is right, Mr. Chairman.

MR. SINCLAIR: Well my lord, the amazing thing is one of the reasons assigned by the Duncan Commission was an excessive mileage of 250 miles. Now I say there is no extra 250 miles and I think that if the Maritime Transportation Commission is using that to support their argument, as they appear to do from their brief, they might bring some evidence before the Commission.

THE WITNESS: Mr. Chairman, in answer to that, the short-line mileage, the air-line mileage from Moncton to

Montreal as predicated on the fixes of the Trans-Canada Air Lines is 448 miles. Because of these fixes and making allowance for these fixes you deduct 20 miles which brings that figure down to 428. Dorval Airport is 11 miles by highway from Montreal's centre and approximately 8 or 9 miles from the centre of Montreal by air, and the airport at Moncton, New Brunswick, is approximately 6 miles in a straight line from the centre of Moncton, making a total of 14 miles, which deducted from 428 gives you a mileage of 414. I am not certain whether the Trans-Canada Airlines route is predicated on the basis as the crow flies, so with that allowance (let us assume that it is) that gives us 414 miles.

Now, from Montreal to Moncton, on the Intercolonial the mileage is 648 miles, so 648 less 414 is roughly 234 miles. Now the Duncan Commission made a finding. I presume that the Duncan Commission was very careful in their analysis of what the actual mileage was, and they, in their report, definitely state 250 miles. There is, at Chapter 6, page 77 of the History of the Intercolonial Railway, specific reference made to the route across the so-called Ashburton Treaty territory. For example, this statement is found in that particular chapter:

"If in such circumstances, an intercolonial line to connect the cities of the Maritime provinces with those of the St. Lawrence had been constructed, the building of 250 miles of railway, representing an expenditure of \$10,000,000. would have been unnecessary."

I take it that the engineer, Sir Sandford Fleming,

must have been an exceptionally good engineer, because I believe at one time that he served as the Chief Engineer of the Canadian Pacific Railway, and I do not believe they would have hired him if he had made an error of 40%.

MR. SINCLAIR: Well, maybe he learned that he could not build a railway as the crow flies. Now, what I really want and wish you to answer, Mr. Matheson, is, are you making any claim for special treatment in regard to rates based on excessive railway mileage? We will say 250 if you like.

A. No, I believe Mr. Sinclair, that that has been more or less from the mileage standpoint, taken care of.

Q. Thank you. So therefore your claims are based on geographic disadvantages?

(Page d7310 follows)

A. Geographic and economic, which were also recognized by the Duncan Commission in their finding, and incorporated in the preamble to the Maritime Freight Rates Act.

Q. Now, looking at your geographic disadvantage, I will give you some rates and distances from Ontario points to the central market as compared with Maritime distances and rates to the same market, and ask you in the light of these if it is not a fact that there are factors other than economic and geographic disadvantage that have no relation to transportation which are the real factors and which are the real basis of your problem. Now, we will compare class rates first: St. John to Montreal, that is 488 miles. Compare that with from Sudbury to Montreal, which is 442 miles, and I will make the comparison. The first rate I will read is St. John and the second one will be Sudbury. First class, 114, 132; 100, 114; 86 --

A. That is St. John to Montreal, 114?

Q. First class, St. John to Montreal. 3rd class, 86, 98; 4th class, 72, 82; 5th class --

A. 4th class, 57, 82.

Q. 4th class is 72, 82; 5th class is 56, 66; and the relationship goes on. I suggest to you if you check, Mr. Matheson, you will find, comparing Moncton with the Soo, to Montreal, on class rates, you will find that Moncton, which is 614 miles from Montreal as against 622 miles from the Soo to Montreal, has quite substantially a lower rate. The same applies comparing Halifax with Marathon, Ontario, where Halifax is 803 miles and Marathon 806 miles, or comparing Sydney, which is 956 miles, with Fort William, which has 995 miles to go to be in Montreal. Now, dealing with commodities, taking forgings, iron or steel, from Trenton, Nova Scotia, to

Montreal, 775 miles, 38 cents; the same commodities, Hamilton to Montreal, 373 miles, 45 cents. Railway car material --

A. Just one moment, now. You say Hamilton to Montreal, 45; is that the specific rate, or is there also in addition to that, Mr. Sinclair, a special competitive rate? Are these the lowest rates you are giving me?

Q. These are commodity rates; that is a specific commodity rate.

A. That is not a competitive rate?

Q. Not a competitive rate, a special rate.

A. It is a special rate, but not a competitive rate.

Q. That is right.

THE CHAIRMAN: Well, is there a competitive rate in force, actually?

MR. SINCLAIR: No.

THE CHAIRMAN: Then you are giving us the rate actually charged in all these cases, Mr. Sinclair?

MR. SINCLAIR: That is right.

Q. Railway car material, Trenton, 775 miles to Montreal, the rate is 33 cents; Hamilton, 373 miles to Montreal, there is no commodity rate but the 5th class rate is 56 cents and the 6th class rate is 52 cents.

A. Just one moment, now. There is no commodity rate. Is there any movement of this railway car material from Hamilton to Montreal? -- because it won't be a comparison, if it is a fair comparison, Mr. Sinclair --

Q. The answer is, yes, there is movement on the class rate.

A. Very much?

Q. All I am instructed is that there is movement; these are not paper rates.

A. It might make a very great difference. It is okay.

Q. Iron and steel articles, Trenton to Montreal, mileage 775, 38 cents. Sydney to Montreal, 956 miles, 43 cents. Hamilton, 373 miles, 45 cents. And I suggest that you will find the same comparisons on lumber and potatoes. For instance, as to potatoes, there is not much movement from Ontario to the Montreal market, because it is pretty well served from the Maritimes, in so far as potatoes are imported, I understand, but the comparison is, Woodstock, 455 miles, 37 cents; Aroostook, New Brunswick, 510 miles, 37 cents; Leamington, Ontario, to Montreal, 553 miles, 52 cents. Now, in regard to those matters, those commodities and those class rates, Mr. Matheson, certainly transportation cannot be said to be the problem, can it?

A. In answer to that, Mr. Sinclair --

THE CHAIRMAN: Q. What do you say, Mr. Matheson?

A. In answer to Mr. Sinclair, you can take any specific point and make some comparisons along that line. Now, in so far as Montreal is concerned, it does indicate that under these Maritime rates, so-called, reduced under the Maritime Freight Rates Act, it does give an advantage ratewise. For example, as you illustrate, I think, the case of class rates from Sudbury to Montreal for a difference in mileage of around 46 miles, it does give an advantage on the Maritime Freight Rates Act. There are two reasons for that, or probably three. One is that it is the rate reduced under the Maritime Freight Rates Act; and of course, being a rate reduced under the Maritime Freight Rates Act, it is not to be used as a criterion of reasonableness in relation to other rates, according to Section 7 of the Maritime Freight Rates Act. Number two, basically I would say these rates were influenced by water competition in their initial stages, and reflected, with

some changes throughout the years. And number three, there is the question of the construction of the inter-territorial rate basis which reflects the lower interior rates within the Maritime Provinces and the groupings of the Maritime Provinces. So when you come to groups --

Q. Well, do you --

A. I will finish this, if I may, and then I will go back to your point.

Q. All right, I will sit down.

A. So when you take any groups there and stick down mileages and try to compare them with mileages, I think you know yourself that you have got to make allowances for the particular groups.

Q. You have told us that the Maritime Provinces, then, at least have three transportation advantages that you listed that would not be operative in certain other sections of Canada?

A. Transportation advantages which I think were --

Q. It is very easy; can we --

A. One moment; I am not finished yet, Mr. Sinclair. A transportation advantage in so far as Montreal is concerned, which -- we will take just referring to the class rates, the finding of the Duncan Commission, in order to obviate certain other conditions that obtained in relation to the Maritime Provinces, in order to assist them to get their products outside of the Maritime Provinces, or not at all.

Q. Therefore you are putting your case, then, solely on economic grounds; we have ruled out excessive mileage, now we have ruled out transportation, and now we have economic grounds left; is that correct?

A. Economic grounds in relation to historical aspects and the purpose and intent of the Intercolonial Railway.

Q. So that is the basis that we get down to and on which you rest your case in these briefs?

A. Oh, definitely.

Q. And no other basis?

A. The fact that we have to get the markets in the rest of Canada in order for the Maritimes to exist.

Q. Rather than take up the time --

THE CHAIRMAN: Yes, but I must say, though, very much earlier in his exposition of his case Mr. Matheson told us that conditions had altered so much in the way of freight rates, competitive rates, and so on, that the special arrangement made concerning the Maritimes had been eaten into.

Q. Now, isn't that what you said?

A. Oh, definitely.

Q. It is not only economic grounds?

A. The competitive rates --

Q. Tell us shortly again, what is your position about that? What direct change has taken place in railway rates which you feel displaces you from the position in which the Maritime Freight Rates Act was intended to place you?

A. Well, pursuant to the effective date of the Maritime Freight Rates Act, July 1, 1927, and more specifically during the period 1930 on to just before the war, competitive rate reductions were implemented in the central provinces, which had the tendency of offsetting the advantages which we considered inherent in the Maritime Freight Rates Act.

Q. Now, does your brief particularize those cases?

A. Definitely, sir. In Exhibit 47 there are quite a few appendices covering that specific point.

MR. SINCLAIR: Q. Then you want to change

the answer you gave to me; your case is not based solely on economic grounds, then?

A. As I said earlier -- I think I said it -- there were the changes in transportation conditions and circumstances, competitive and otherwise, which also had a bearing in regard to our stand in this brief.

Q. Well, the rate comparisons I gave you were existing rates. Where is your disadvantage on those? We will have to go over them again, apparently, Mr. Matheson.

A. Well, for example, you are taking from Sudbury on the class rates. To give you one specific illustration, the first class rate for a distance as you have given me -- and I assume they have been checked by your traffic men -- of 114, in regard to an l.c.l. movement which that would cover, there is involved a free pick-up and delivery service. Now, when I say free pick-up and delivery service, for the distance of 488 miles, under the conditions that obtained before the recent increases, there might have been a small surcharge to cover the pick-up and delivery. Now, in regard to our shipment say from St. John to Montreal, on an l.c.l. shipment our shipper would have to deliver the shipment to the station or pay a trucker, and in competition in Montreal he would have also to pay the truck at destination, so there is an illustration of a change of a competitive rate obtaining, which would tend to wipe out the advantage which we had expected or thought we had obtained under the Maritime Freight Rates Act.

Q. Then the rate I gave you from Sudbury to Montreal, 1st class, 1.32, was a straight class rate, and it did not include P. and D. charges, so that if P. and D. charges were there that rate would be higher and your position would be maintained?

A. You can check that with Mr. Jefferson. The 1st

class rate is approximately the pick-up and delivery basis, excepting when the 15 per cent increase was effectuated last September, that was held on, and that has been lowered somewhat with the 8 per cent which just was effected recently. So generally speaking, looking at the picture, Mr. Sinclair, going back, that 1.14 rate was approximately the pick-up and delivery rate that applied between -- rather, the Sudbury to Montreal, of 1.32, I should say.

Q. That was true at one time, but it is not now?

A. Well, it is only a temporary situation as I see it now.

Q. Oh?

A. You see, last September 15, Mr. Sinclair, you implemented an increase in competitive rates. Included in that competitive category were your P. and D. rates in Ontario and Quebec, and that was the time you had your application for a 15 per cent increase and a 20 per cent increase to apply to your normal rates, and the spread that was created by that has gone back partly by the 8 per cent increase, which I understand you are not satisfied with, you see, so the tendency is toward that equalization.

Q. I see; and you do not think the competitive rate will go back?

A. I do not think the competitive rate will go back again? Well, that is in your hands. I would not say. It might or might not.

Q. Well, it was you who said it was temporary, not me.

A. I think it is temporary.

Q. You think it is going to go down?

A. The competitive rate? No, no. I say the

relationship between the competitive rate and the normal class which you have given me will tend to be more equalized if you get another increase, on the rates other than competitive.

Q. Now, Mr. Matheson, in your brief you suggested that one of the reasons, or the reason -- you suggested that the reason that the railways applied for percentage increases was because of competition on short hauls. That is what I get from your brief; am I correctly interpreting your brief?

A. Just state that again, Mr. Sinclair.

Q. The reason why the railways applied for percentage increases was because of competition on short hauls?

A. Would you mind showing me the page on which I stated that in my brief?

Q. Page (f). I take it that is your suggestion. I will try to deal with this generally, Mr. Matheson, or I will be too long with you.

A. I appreciate that. I just want to get that particular part that you have got there.

Q. The first complete paragraph.

A. "The applications of the Railway Association of Canada in 1946 and 1948 for uniform" --

Q. I don't think you need to read it; that is the one.

A. I will read it:

". . . percentage increases would indicate that the railways are looking more and more towards long-haul freight traffic for increased revenue to offset the deterioration in returns from other sources, such as short hauls" --

Q. So the answer to my question is what? Yes?

A. Yes.

Q. Yes?

A. The answer to this question, just reading that over, I say is yes.

Q. Well, never mind that, Mr. Matheson. I think we might get along a lot better -- perhaps I might have the question read to you.

THE REPORTER: "The reason why the railways applied for percentage increases was because of competition on short hauls?"

MR. SINCLAIR: Q. Is that your view?

A. I will stick to what I said at page (f), Mr. Sinclair, not the way that question is put. It gives me a different slant altogether, and I stick to what I have said right in my brief.

Q. You do not want to answer that?

A. No, definitely not. I think it is answered right there in my brief.

Q. You do?

A. Not the question you gave me. You are referring to the second paragraph.

Q. All right, I will just have it noted on the record that you did not want to answer the question. Now, Mr. Matheson, through rates between central Canada and the Maritimes, not only eastbound but also westbound, where there is a 20 per cent advantage for part of the haul, are generally speaking lower than the schedule A basis, even after you deduct 250 miles; that is right?

A. Yes, definitely. That was the basis that was put as an inter-territorial rate. It was lowered back in 1923 or 1924.

Q. So that you have the advantage of the schedule A rates?

A. That is right.

Q. And 250 miles below that?

A. If you take St. John, referring to St. John as your base, it is one block, roughly speaking one block lower than schedule A rates. You are taking St. John as your base there, as the rates have evolved, and since that time and in relation to the regular groups, which was a recognized condition historically, in connection with the maritime freight rate structure, that gives you the picture, Mr. Sinclair.

Q. I think possibly the best way to do this is to ask if I can file as an exhibit a statement of class rates between Montreal, Toronto and specified points in the Maritime Provinces, based on --

THE CHAIRMAN: Those are the class rates?

MR. SINCLAIR: Yes; based on present rates, eastbound, westbound; schedule A for actual distance via Rimouski, Quebec; schedule A for actual miles, less 250 miles, via Rimouski, Quebec; and schedule A for distance via Edmundston, New Brunswick.

MR. DESMARAIS: That will be Exhibit 105.

EXHIBIT No. 105: C.P.R. statement of class rates between Montreal, Toronto and specified points in the Maritime Provinces.

MR. SINCLAIR: I have plenty of copies for the use of the Commission and for the use of counsel.

Q. Now, Mr. Matheson, freight traffic to and from the Maritimes in the main moves over the route of the National Transcontinental and the Canadian Pacific; that is correct, is it not?

A. In the main?

Q. Yes.

A. Traffic originating on the Canadian National

Railway moves mostly -- that is, freight traffic -- over the N.T.R., and traffic going to C.P.R. territory over the C.P.R. track from St. John west.

Q. So the route of the Intercolonial is only used for passenger business and local freight business?

A. Oh, no, definitely not. I say most of the freight traffic. There are through trains on the C.N.R. via the long route, definitely.

Q. But in the main, I said.

A. Oh, in the main, most of the manifest trains, what they call the manifest trains or the through freight trains --

THE CHAIRMAN: Q. What you call what?

A. Manifest trains, sir; move on the N.T.R., on the National Transcontinental Railway.

MR. SINCLAIR: Q. So that actually, Mr. Matheson, your proposal for treating the Intercolonial as an independent organization for rate-making purposes is really a device to force lower rates on the routes where the traffic in the main does move?

A. Would you repeat that question, Mr. Sinclair?

MR. SINCLAIR: Would you read it, please, Mr. Reporter?

THE REPORTER: "So that actually, Mr. Matheson, your proposal for treating the Intercolonial as an independent organization for rate-making purposes is really a device to force lower rates on the routes where the traffic in the main does move?"

THE WITNESS: I would not answer that question yes, Mr. Sinclair, for this reason --

MR. SINCLAIR: Q. Would you answer it no?

A. I think I would have to qualify it. You see, you must remember, there is a grouping arrangement

throughout the whole maritime structure. Now, if the N.T.R. was not there at all, the same rate that was set on July 1, 1927, would still obtain, so I could not answer your question that way, Mr. Sinclair. I would have to qualify it to that extent, recognizing the groupings.

Q. The purpose, I say, of you asking this Commission to recommend that the Intercolonial be treated as a separate entity for rate-making purposes is merely a device to force lower rates on the routes on which the traffic now moves, because surely you are not suggesting that all the freight traffic to the Maritimes, to and from the Maritimes, should follow the more circuitous route of the Intercolonial, are you?

A. No, no, definitely not; but I do not see the point of your question at all, Mr. Sinclair. I think it is quite clearly stated in the brief that the purpose and intent of the Intercolonial Railway as a separate entity is in order to give recognition to the purpose and intent of the railway as a means to facilitate the shipping of goods out of the Maritime Provinces, as we understand it, which policy was laid down in past years, by a rate structure, up to the year 1912.

Q. Suppose the natural resources of the Maritimes are so thin that the existing population can never enjoy the standard of consumption and production equal to the national average, even if the freight was carried free on the Intercolonial, what would you suggest was the transportation problem then?

A. There are some people in the Maritimes who even went so far as to suggest that the freight should be carried free -- "for free", to put it that way --

Q. Are you?

A. I am not finished; which the Duncan Commission found was perhaps a little ridiculous, to go that far -- that there should be some charge.

Q. So that by setting up the Intercolonial as a separate entity for rate-making purposes, it is not so that you will be able to manipulate the rate structure on the other route at all; that is your contention?

A. Oh, to answer that, in so far as the C.P.R.'s position is concerned, we feel that if there were some adjustments necessary to facilitate an industry getting into the market, there should be some recompense to the C.P.R. based on what otherwise would be the normal rate, so that they would be protected in somewhat the same manner as is being done now under the Maritime Freight Rates Act.

(Page 7325 follows)

Q. Well then, Mr. Matheson, so if all the economic and geographic disadvantages of the Maritime provinces were taken care of by subsidy or otherwise, so that they were able to compete absolutely to the zenith in the Central and Western Canadian markets, what do you think would be the demand from the Central and Western Canadian markets for similar treatment?

THE CHAIRMAN: You mean shippers?

MR. SINCLAIR: Yes, my lord.

A. I think, if they had an identical case as has been found in connection with the Maritimes in relation to the Intercolonial Railway and the purpose and intent thereof, that that might be a matter for consideration.

Q. Well, if Alberta had disadvantages - -

MR. FRAWLEY: Don't you think we have?

MR. SINCLAIR: I suppose so. I said if Alberta had disadvantages and those were advantages in the Maritimes, do you think Alberta should be compensated to put it on an equality basis with the Maritimes?

A. Well, I imagine you have to be consistent in connection with a proposal of that kind.

Q. If that was done how would your position be advanced one iota?

A. Oh I don't think we would have very much concern so far as Alberta is concerned, and the markets of Central Canada.

Q. The same thing would apply to Ontario, Quebec, or any other province, and I want to know Mr. Matheson, where do you think it would end?

A. Well, I suppose there has not been so many - you must remember it is 1927 since the Maritime Freight Rates Act was passed. That is over 22 years ago and I don't

think there has been very much difficulty.

THE CHAIRMAN: What do you say about it?

A. There has not been very much difficulty in regard to the application of that Act since 1927. Mr. Sinclair is leaving the impression that it would lead from one thing to the other. All we are asking at the present time, if we bring it up to date, is that we think there should be certain adjustments in line with what we thought was the purpose, and intent, of the Act.

Q. You think the Act itself ought to be amended, do you?

A. Definitely sir.

Q. Have you provided any suggestions for that?

A. I suggested in my brief (I just forget the exact page) an amendment to Section 8.

Q. If it is there, that is all right. I just wanted to know.

A. Yes, we have made several suggestions.

Q. We have before us, in writing the actual amendments that you think ought to be introduced into that legislation?

A. Yes, that is what amendments I had made or proposed excepting where I made the proposal in connection with the arbitraries. I have not provided it in the form of a section to be incorporated in the Act.

Q. Well you see, if you completed your brief and Mr. Sinclair had them, then we would have a very concrete matter to discuss.

A. That is fine, Mr. Chairman. I will undertake to draft out what my suggested amendments are in detail.

MR. SINCLAIR: On page 52 of your brief, Mr. Matheson, you refer to Section 325 (5) of the Railway Act as the type of rate which goes to make up the present

rate structure. Those are the Crow's Nest Pass grain rates. The question I wanted to ask you is whether you think those rates reflect the various factors in rate-making which you set forth at page 52 of your brief, that is, the value of service, the value of the commodity, etc.

MR. FRAWLEY: Whether they are compensatory or not?

MR. SINCLAIR: Do you want me to ask him that too?

MR. FRAWLEY: I was wondering if your question went that far?

THE CHAIRMAN: Goes how far?

MR. FRAWLEY: I am asking my friend if he is putting it to Mr. Matheson as to whether he has a view that the Crow's Nest Pass rates are compensatory or not? I asked that for a purpose, and I think my friend should state whether or not that is what he wants Mr. Matheson to express an opinion about.

MR. SINCLAIR: I never asked him anything about compensatory rates. That is already before the Commission in Mr. Matheson's file, his estimate being that they are not compensatory to the extent of \$32,000,000 per annum, which I would like to suggest, is a very excellent estimate in view of the material that was filed by the Canadian Pacific in their brief.

MR. FRAWLEY: And in respect to which material filed by the Canadian Pacific Railway there will be certain objections raised.

MR. SINCLAIR: I cannot recall any objection being raised to Mr. Matheson's estimate of \$32,000,000.

MR. FRAWLEY: I am more concerned with your estimate,

MR. SINCLAIR: It is only half as big.

THE CHAIRMAN: You two gentlemen are in training.

THE WITNESS: In the light of the question I wish to

defer from making any answer to that question.

MR. SINCLAIR: I asked you if the Crow's Nest grain rate reflected all the factors that you set out in page 50 of your brief, that is the ability to pay, the value of service, cost -

A. My only answer to that, Mr. Sinclair, and being fair, is that those are statutory rates as provided under the Act. Now, just as it is said in the Maritime Freight Rates Act, Section 7, all the factors that you take into consideration regarding the reasonableness of rates and so on, is passed by the Board.

Q. Is it?

A. Insofar as any complaints arising in regard to their rates under the Maritimes Freight Rates Act, Section 7.

Q. Do you say a similar situation exists in regard to the Crows's Nest Pass rates?

A. I would say yes, insofar as the Crow's Nest Pass rates in regard to any comparison I might make or anybody might make. There has been a decision, as you know, handed down by the Board of Transport Commissioners that you cannot claim that those rates are unjustly discriminatory in relation to those Crow's Nest Rates, so therefore, when you are dealing with the reasonableness of those rates, all these factors which you say are set out at page 50, come into play, so I will leave it at that, Mr. Sinclair.

Q. I asked you if those Crow's Nest Pass rates, in your opinion, reflected the various factors that you said should be taken into account in fixing rates?

A. I would not know, Mr. Sinclair, without studying those rates very carefully. No, I would definitely not.

Q. Would you think that rates that have remained fixed since 1889 reflected the factors?

MR. FRAWLEY: Now of course, my lord, if my friend is trying to get in in this way with a side-wind, a further attack upon the Crow's Nest Pass grain rates, I register an objection. I think he should be stopped. We still have not said all we have to say about the Crow's Nest Pass grain rates and I really do not think it is right that my friend should now, in view of certain information he has, that he should now endeavor from Mr. Matheson to attempt to substantiate the attack he has tried to make on the Crow's Nest Pass rates, the attack I mean that they are not compensatory. I am confining my remarks to that point.

THE CHAIRMAN: We have, of course, to be careful what questions are put, but Mr. Matheson is here and he is talking for a certain area of Canada, and what disadvantages it is under in respect of freight rates. Well, Mr. Sinclair then is referring to other areas of Canada and asking what Mr. Matheson thinks that the people there are being given. I do not really see what prejudice there is to the Crow's Nest Pass rates themselves from those questions.

MR. FRAWLEY: Except, my lord, my friend in cross examination, perhaps should be allowed to get from the witness any information he likes on these rates, but what I object to is that the Canadian Pacific Railway now, through this line of examination, is it endeavouring to find some support for an attack on the compensatory nature of the Crow's Nest Pass grain rates? That is all, my lord. At the moment the question does not touch it very much, but if it is leading to that, then I object.

THE CHAIRMAN: Do you think there is any harm in

that?

MR. FRAWLEY: By having Mr. Matheson express an opinion about it, no.

THE CHAIRMAN: For instance, if you saw an opportunity through Mr. Matheson or another witness, to support the case which you intend to prevent eventually, I do not see why you should not do it.

MR. FRAWLEY: No, I quite agree, except my lord, that there are some limitations placed upon the attack which the Canadian Pacific Railway has made upon the compensatory nature of the Crow's Nest Pass grain rates. If I thought the matter were open, that is a different matter altogether.

THE CHAIRMAN: Well, of course, you are anticipating.

MR. FRAWLEY: Yes.

THE CHAIRMAN: You have in mind how far the Commission is prepared to go in considering whether or not any given rates in Canada between one point or another, are compensatory or not?

MR. FRAWLEY; That is what I have in mind precisely, my lord.

Q. THE CHAIRMAN: You know we are not at this present time disposed to do that?

MR. FRAWLEY: That is right, sir, and it was with that in mind that I thought my friend's question was somewhat out of order, even if he is cross-examining and asking Mr. Matheson for an opinion.

THE CHAIRMAN: Well, we will let Mr. Sinclair proceed and we will see from question to question whether he does trespass on forbidden or dangerous ground. What do you want to get?

MR. SINCLAIR: As an experienced transportation

man who is put forward here by the Maritime Transportation Commission to give opinion evidence as to the principles of rate-making, I think it is most improper for Mr. Frawley to say that he should not express an opinion as to whether rates fixed in 1899 reflect the factors that this transportation expert said should be reflected in rate making.

MR. FRAWLEY: My friend has misconceived my objection. I was objecting to my friend pursuing that type of question;. I was not objecting to the witness.

THE CHAIRMAN: It depends how far he pursues it.

MR. SINCLAIR: I must say Mr. Frawley is acutely sensitive about the compensatory nature of the Crow's Nest Pass grain rates.

MR. FRAWLEY: You give me a chance to say that.

THE CHAIRMAN: We know that the Crow's Nest Pass rates are set out by legislation. What is it you want to know from him?

MR. SINCLAIR: I merely asked him whether, in his opinion, rates that were fixed in 1889 reflected the factors that he said, in his brief, should be taken into account in fixing rates, mainly, among other, value of service, costs, building, traffic to bear, and so forth.

THE CHAIRMAN: Then why go back to 1889? If the principles he is laying down are good, they are always good.

MR. SINCLAIR: He referred to those rates -

"The rates which make up the present structure consist of standard class, special class, commodity (including mileage, special point to point tolls, competitive and otherwise) agreed charges as authorized under Part 5 of the Transport Act, and called statutory rates provided by the Maritime Freight Rates Act,

(including the different types of rates designated) and subsection 5 of section 325 of the Railway Act. Standard class and agreed charges require specific approval of the Board of Transport Commissioners. All other rates published by the carriers are merely filed with the Board. The jurisdiction of the Board in the matter of those rates is principally circumscribed within considerations respecting reasonableness and discrimination. The Board does not initiate rates, but on its own motion or on complaint, can require the carriers to change rates which are unlawful, unjustly discriminatory and /or unreasonable. Rates that have been prescribed by the Board cannot be increased unless it is indicated to the Board's satisfaction that the rates had become unreasonable, unjustly discriminatory or both. Nor can rates established under the Maritime Freight Rates Act be increased without compliance without the Act."

That is the top of page 52. He says these are different types of rates which make up the present rate structure.

THE CHAIRMAN: Well, that is a fact, isn't it?

MR. SINCLAIR: That is a fact, but just previously to that he is talking about rate making. He says:

"Rate making is not an exact science. As a price for service changes take place daily within the structure, influenced principally by new traffic conditions, industrial developments, and competition. Since the commencement of railways in Canada, there have existed transportation problems related to a considerable degree to national policies and such geographical characteristics as topography, climate,

"and water routes. The establishment of individual rates might involve in some instances a degree of trading but the railways, in reaching a decision, evidently take into consideration, among other things, what the traffic will bear, the cost of service, the value of the service, competition of other carriers, the relationship -- " etc.

I am asking Mr. Matheson whether those principles of rate making should be a factor, in his opinion, in the statutory rates on grain.

THE CHAIRMAN: Well, that is rather a matter of argument, isn't it?

MR. SINCLAIR: I don't think so, my lord.

THE CHAIRMAN: Suppose he says yes. How much further ahead will you be?

He says "Here they are" and he sets them out, and as I see that it seems to me to be the case. These things are all there. Now I understand you are going to ask at some time or another, to alter some of them. Do you want Mr. Matheson to say -

MR. SINCLAIR: No, my lord, I am not asking Mr. Matheson to do anything but express his opinion as a transportation expert who has spent over 20 years studying the problem.

THE CHAIRMAN: His opinion of what?

MR. SINCLAIR: Whether the statutory rates on grain reflect the various factors -

THE CHAIRMAN: I don't know what you mean by the word "reflect". You have to be careful. Whether the statutory rates on grain what?

MR. SINCLAIR: Take into account, my lord, the factors that he says should be the basis upon which the rate structure is made, namely, the value of the commodity, costs, etc.

MR. FRAWLEY: Then, my lord, isn't he asking the witness this: "Are not those rates compensatory?" I think that is a fair interpretation of the question.

THE CHAIRMAN: No, I do not.

Mr. COVERT: Perhaps my lord, I might add something to the discussion. Mr. Sinclair is asking of the witness whether or not a statutory rate does take into account these things which the railway says, or which he says the railway has taken into consideration in rate making. Now it would seem to me that perhaps it is evident that the fact that they are made by a statute would mean you could not take these things into account and maybe we are just beating the wind, because he has said these are fixed by statute. They may have been taken into account once. I am just wondering if that might clarify the question.

THE CHAIRMAN: Now Mr. Matheson may not appreciate these things, although I think he does in the case of the Maritimes.

MR. SINCLAIR: I will put the question to Mr. Matheson.

THE CHAIRMAN: With all due consideration to Mr. Matheson what is the effect of that? Supposing Mr. Matheson says: "No, I don't think the statute should be there", or if he says: "Yes, I think it should be there", how far ahead are we one way or the other?

MR. SINCLAIR: Then my lord, I will ask this question first. These discussions and the objections of my learned friend, Mr. Frawley, have made it necessary for me to put this question next which I will to Mr. Matheson. Are you in favour of statutory rates?

THE CHAIRMAN: Yes, now that is a question.

MR. SINCLAIR: - such as are set forth in Section 325 (5) of the Railway Act?

A. My answer to that, Mr. Sinclair, is contained on page 135 of my brief in paragraph (i) "

"The statutory rates on grain and grain products as provided by Section 325 (5) of the Railway Act, should be maintained."

THE CHAIRMAN: Well, Mr. Frawley, do you still object?

MR. FRAWLEY: No, I make no objection, sir. It took a long time to get to it,

MR. SINCLAIR: All right, Mr. Frawley. Even though the results of maintaining them is to cause the other shippers to pay \$33,000,000, as your estimate is, in charges that they would not have to pay if grain rates bore their fair share of the transportation?

MR. FRAWLEY: I object to that. I object to practically every word in the question. I do not think he should be allowed to ask it at all. There are inferences there which my friend should not be allowed to talk about.

MR. EVANS: May I have a word to say? I should like to clarify this a bit. It seems to me that all parties here are here to express their views about all aspects of the matters committed to your Commission's jurisdiction, and it therefore seems to be proper in my humble submission, that all witnesses who come before your Commission, might be asked for their views upon any aspect of the matters contained within your Commission's commission. When they have been asked they expressed their views. I think they should stand cross examination on those views if they do not happen to co-incide with the views of the person asking the question. I think the utmost right ought to be here

to ask the opinion of each representative. There should be no sensitive feeling on the part of people like Mr. Frawley, in my humble submission, because I suggest to this Commission that when our friends are going to be on the stand they are going to be asked a lot of questions that we might feel we had a right to object to, but I do not think I can suggest to your Commission that if those questions related to subjects about which it made submissions that I could find any basis for objecting to them.

THE CHAIRMAN: Well, so long as we are dealing with matters which this Commission is empowered to deal with, ^{and} intend to deal with, I do not see any reason why any witness might not be used to clarify any particular part of the inquiry. The weight that his opinion will receive is, of course, another thing.

MR. EVANS: I quite agree. I think the Commission will, of course, have to take the weight of the evidence.

THE CHAIRMAN: Now you see Mr. Matheson says (I suppose he has read from his brief) that what his opinion is about this particular statutory fixing of rates is that it should remain. He says he thinks it ought not to be disturbed. What then are these further questions to be addressed to? I think Mr. Sinclair said even if it entails a loss of \$32,000,000, well, you are assuming that there is a loss of \$33,000,000.

MR. SINCLAIR: That is an estimate of the witness that he put on the record of this Commission and which my learned friend, Mr. Frawley, did not cross-examine him on, when he closed his cross-examination, my friend Mr. Shepard.

THE CHAIRMAN: Does Mr. Matheson say anywhere in his brief or oral evidence that the Crow's Nest Pass

system has entailed the loss of \$32,000,000.

MR. SINCLAIR: \$33,000,000.

THE CHAIRMAN: Where?

MR. SINCLAIR: Footnote 188, page 136, part I:

"It is estimated that on the basis of an average haul of 800 miles for Crow's Nest grain and grain products, and by using the Board's formula in the 21 per cent case (page 64, XXXVII J.O.R. & R. 1-A) and the 1922 rates before the Crow's Nest rates were re-established, the railways, instead of obtaining a 21 per cent increase as of April 8, 1948, would have obtained only an 8 per cent increase, and the reimbursements to both the C.N. and C.P. to maintain the Crow's Nest rates would have amounted to \$33,017,820, in the year 1947."

And as I said, my learned friend, Mr. Frawley, and Mr. Shepard closed their cross-examination of Mr. Matheson without cross-examining him or making any reference to that whatsoever.

THE WITNESS: I might say, in regard to that figure, I was discussing the various proposals that were made as to recompensing the railways for the difference in the Crow's Nest rates and the rates that obtained in 1922, and I said in the same manner as reimbursements are made in the Maritime Freight Rates Act. I said on page 135:

"-- it is believed that a determination should first be made as to what the normal rate would be after taking into consideration the density of the grain traffic, train load movements, per car revenues, the incidence of Crow's Nest rates in relation to the Western rate structure and other factors. If, pursuant to a careful study, it should appear that

the Crow's Nest rates on grain and grain products are relatively non-compensatory it would seem fair and reasonable that the railways should be reimbursed for any deficiencies."

And the footnote 188 follows that as a qualification which I was making predicated on a rate which existed before the Crow's Nest rates were reinstituted in 1922.

MR. SINCLAIR: There was Mr. Matheson's estimate --

THE CHAIRMAN: If it turns out that these rates are relatively non-compensatory, then he says it would be fair and reasonable that they be reimbursed for these deficiencies. That is his opinion and when he expressed that opinion he had before him figures which showed, as he says, a figure of \$33,000,000. What else do you want to know from him?

MR. SINCLAIR: I am asking Mr. Matheson this, that if grain rates are not allowed to change with the changing conditions and cost of transportation, is he prepared to have his rates in the Maritime Provinces take up a slack of \$33,000,000 a year or their proportion of it. Is he willing to have that continued?

THE WITNESS: I think it is quite clear, I think in our brief, that we agree with the statements that have been made in previous investigations, that in the event of any finding along that line, where national policy dictates assistance or dictates special arrangements, that that should be looked upon for what it is and should be then not borne by the railways or by other shippers but should be a reimbursement or should result in some subsidy or arrangement of that nature.

MR. SINCLAIR: Then to be very fair in trying to sum this up, Mr. Matheson, what your opinion is is

that the Board of Transport Commissioners should make a study of these rates, find the amount of the deficiency, and then the railways should be recompensed for that deficiency?

A. Well, whatever this Royal Commission or the Board of Transport Commissioners, whoever would want to carry on that adjustment, if the adjustment has been made that there should be any relation to the proposals that have been made in connection with the Crow's Nest rates, if on a finding that they are non-compensatory and it has been burdensome to the rest of the Western Canada (I am speaking of Western Canada now --)

Q. Not the Maritimes?

A. -- that rates of that nature, the railway should be reimbursed for them. That is my view in that connection in anything that is done in connection with a national policy of that nature.

Q. So when you say that the statutory rates must be maintained, you are saying not at the expense of the railways and not at the expense of other shippers in Canada?

A. But at the expense of the Dominion Government in connection with the national policy in relation to those rates.

Q. But not at the expense of the railways or the other shippers in Canada?

A. When you speak of the "other shippers" --

Q. Shippers other than grain?

A. And those that pay the freight.

Q. Then the answer then with that qualification is yes?

A. That is right.

---The Commission adjourned at 4.30 to meet again on Monday, November 7, 1949, at 10.30 a.m.

A.R.

C. ...

ROYAL COMMISSION
ON
TRANSPORTATION

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ROYAL COMMISSION ON TRANSPORTATION

Index Page #56
Page

<u>EXHIBIT No.106: Brief of Canadian Food Processors Association, - - - - -</u>	7340
MR. COVERT: Read into record telegram addressed to Commission from Elphege Beaudoin, president of the Quebec Provincial Federation of Labour - - -	7340
<u>RAND H. MATHESON - Recalled. Cross examination by Mr. Sinclair continued - - - - -</u>	7341
Cross examination by Mr. O'Donnell - - - - -	7382
Noon adjournment - - - - -	7433
<u>RAND H. MATHESON - Recalled. Statement re occasion where arbitraries were fixed in relation to rate changes - - - - -</u>	7435
Further cross examination by Mr. Sinclair	7435
Further cross examination by Mr. O'Donnell	7437
Cross examination by Mr. Brazier - - - - -	7440
Cross examination by Mr. Frawley - - - - -	7452
<u>E. V. WOOLLINGS - Called. - - - - -</u>	7470
Mr. O'Donnell: Objection re no copy of brief of Woollings Forest Products - - - - -	7470
Letter addressed to the Hon. Mr. Justice W.A. Turgeon, from Woollings Forest Products, re Pulpwood Freight Rate, Ontario Northland Railway District - - - - -	7471
Examined by Mr. Covert - - - - -	7475
Cross examination by Mr. Evans - - - - -	7477
Statement by the Secretary re filing of briefs	7490
Cross examination by Mr. O'Donnell - - -	7491
<u>CHARLES E. HAWKINS - Called. - - - - -</u>	7493
Presented brief on behalf of the Canadian Pulp and Paper Association - - - - -	7494
Examined by Mr. Covert - - - - -	7497
Cross examined by Mr. Evans - - - - -	7506
Statement by Mr. Hume - correction re answer to the Chairman - - - - -	7510
(Re percentage of for-hire commercial vehicles)	
Statement re question of Mr. Sinclair -- breakdown of other 90% of vehicles - - - -	7511
Statement re question of Mr. Evans - percentage of over-the-road for-hire carriers	7511
Statement re question of Mr. Evans - total number of commercial vehicles in Ontario, etc	7512
Brief presented by Royal Agricultural Winter Fair, Toronto - - - - -	7514
Brief presented by Consolidated Truck Lines Ltd	7518
Statement re change in time of afternoon sessions of Commission - - - - -	7523
Adjournment - - - - -	7523

ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
Monday, November 7th, 1949

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D. - CHAIRMAN

HAROLD ADAMS INNIS - - COMMISSIONER

HENRY FORBES ANGUS - - COMMISSIONER

G. R. Hunter,
Secretary.

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Hugh E. O'Donnell, K.C. }
H. C. Friel, K.C. } Canadian National Railways

F. C. S. Evans, K.C. }
I. D. Sinclair } Canadian Pacific Railway

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C. W. Brazier) Province of British Columbia

F. D. Smith, K.C. }
 } Province of Nova Scotia
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 } the Maritime Board of Trade

J. Paul Barry) Province of New Brunswick

J. O. C. Campbell, K.C.) Province of Prince Edward Island

F. R. Hume }
M. L. Rapoport } Canadian Automotive Transportation
 } Association

OTTAWA, ONTARIO,
MONDAY, November 7th, 1949

M O R N I N G S E S S I O N

THE CHAIRMAN: All right, Mr. Covert.

MR. COVERT: Mr. Chairman, the first witness this morning is Mr. Matheson, but before he goes on the stand there are a few things that I want to do. One is to put in as an exhibit what appears as Exhibit No. 2 in the Canadian Food Processors' Association brief. It will be Exhibit 106. It is not new. As a matter of fact, it is done merely for purposes of transcription.

MR. EVANS: Did you say 106?

MR. COVERT: That is right.

MR. EVANS: What was 105?

THE SECRETARY: 105 was a statement of class rates filed by Mr. Sinclair.

EXHIBIT NO. 106 -- Brief of Canadian
Food Processors
Association, with tables.

MR. COVERT: Next, Mr. Chairman, I want to read a telegram into the record addressed to the Commission from Elphege Beaudoin, president of the Quebec Provincial Federation of Labour. It reads:

"The Quebec Federation of Labour A.F. of L., T.L.C., wish to be on record of supporting the Transport Drivers Union A.F. of L., one of our affiliates in their protest against the statements made by Mr. J. A. Kelly representing the Federated Railway Union before your Royal Commission of Transportation on November third stop As President of the Quebec Federation of Labour I wish to state that if the Railway Union spokesman was accepted it would affect the national economy and cause much unemployment. It is surprising

that the Railway Unions who have advocated free enterprise for the last year are now recommending a monopoly at the expense of thousands of truck drivers who would be forced out of work. We sympathize with the Railway Unions in their efforts to obtain better wages and working conditions and we suggest they stick to that. The interests of organized labour cannot be served by the Railway Unions attempting to better their own cause at the expense of organized labour in the trucking industry."

The telegram is dated November 4, 1949, at Montreal, Quebec, and is signed by Elphege Beaudoin, President, Quebec Provincial Federation of Labour. I was asked by Mr. Hume for the opportunity to correct a statement which he had made.

THE CHAIRMAN: Mr. Hume had asked what?

MR. COVERT: He asked my permission to correct a statement which he had made, but he is not here now. He will be here this afternoon. Mr. Matheson will return to the stand.

RAND H. MATHESON, recalled

CROSS-EXAMINATION BY MR. SINCLAIR (Cont'd)

Q. Mr. Matheson, at the conclusion of the Commission's hearings on Friday last, you stated that you believed that the statutory rates on grain should be maintained but not at the expense of shippers other than grain, or the railways?

THE CHAIRMAN: But not what?

MR. SINCLAIR: Q. At the expense of shippers other than grain shippers or of the railways. That is correct, is it not?

A. That is, Mr. Sinclair, if the statutory rates on grain and grain products were not compensatory then they should not be borne by the railways or the other shippers.

Q. Yes, and your estimate was in 1947, taking the Board's formula, that the statutory rates on grain fell short by some \$33,000,000?

A. \$33,017,120, according to my calculation.

Q. Why do you think that the statutory rates on grain should be maintained?

A. On the proviso -- and I will have to use the word "if" there --

THE CHAIRMAN: Q. On what?

A. On the proviso -- and I will have to use the word "if" -- if they are essential in the national interest they should be maintained.

Q. So that if unduly low rates are not necessary to move the western grain crop, you would not suggest that they be maintained?

A. I believe, Mr. Sinclair, there is a matter of argument there, and far be it from me to express an opinion in answer to your question because I don't know enough about the grain economy to say whether they were needed or otherwise.

Q. Now, I should like to ask you to turn your mind to the question of competitive rates which you deal with in your brief at pages 63 and 64 of volume 1. You say that the effect of competitive rates in Ontario, to use your phrase, has whittled away the benefits received under the Maritime Freight Rates Act. If any industry in the maritimes was prejudicially affected by rates in Ontario, the Board under the Maritime Freight Rates Act is required to cancel such rate, is it not?

A. That is correct, but the problem there is to

prove prejudice.

Q. So that the reason why you say there has been a whittling away is that you do not agree with certain decisions that have been made in connection with that section of the Maritime Freight Rates Act. Is that correct?

THE CHAIRMAN: Did you say certain decisions?

MR. SINCLAIR: Yes.

THE CHAIRMAN: Made by whom?

MR. SINCLAIR: By the courts, for instance, in the potato case.

THE WITNESS: In so far as the decisions are concerned, in the potato case it was laid down -- I think perhaps I will have to explain this -- that the Maritime Freight Rates Act applies to competitive rates outside the preferred territory but that we would have to indicate prejudice, and if we indicated prejudice under Section 8, all the power that the Board has under that section is to cancel the rates complained about, but not to implement a corresponding reduction. There is also a question there that if the traffic was moving by truck, if the cause of the prejudice was with the trucks, it would render the situation quite difficult to prove. For example, in the potato case it was indicated that most of the competition from the Ontario area, for which these competitive rates were established, was moving by truck, and the railways were getting a very small proportion of it. Under those circumstances it was very difficult, if not impossible, to prove prejudice in relation to competitive rates.

Q. Would you agree that a competitive rate should only be put in where the competition is in actual

existence or is potential?

A. I agree that competitive rates should be put in whether the competition is potential or actual.

Q. But only in those two cases?

A. Are you including market competition in that?

Q. I say where the competition is potential or actual is the only basis?

A. And including market competition.

THE CHAIRMAN: Could there be any other case to justify the use of the word "competitive."

MR. SINCLAIR: I do not think there can be, Mr. Chairman, but I think Mr. Matheson's brief suggests that there should be.

THE WITNESS: Well, when I suggest there should be I am speaking of market competition as well. I do not want to repeat it, but to go back to the inherent purpose and intent of the Intercolonial Railway --

THE CHAIRMAN: Q. You mean market competition between railways or between producers?

A. When you speak of market competition it is very closely related to the carriers. For example, if a railway put in a low rate to facilitate the movement of goods for an industry on its line, that would be a market competitive rate. That is to say, they are not putting in that rate to meet the competition of another carrier such as trucks or a water line or another rail line.

Q. They are meeting what then?

A. Pardon?

Q. What competition are they to meet?

A. They are meeting the competition of another industry which probably is nearer to the market.

Q. On their own line of railway?

A. I am speaking of another line.

Q. On another line of railway?

A. That is right.

Q. Then the competition is between two railways?

A. Yes, that is the difficulty, to disassociate it when you speak of market competition. You see the basis of the rate for the other railway would be practically the same as the basis of the rates on this railway, but the other railway is nearer to the particular market. Let us say the rate is 15¢ from X to Toronto, and on the other railway on the same basis of rate structure the rate is 25¢ from point Y to Toronto. The railway that is serving point Y wishes to get into that particular market, but it cannot at the rate of 25¢ vis a vis 15¢ with the other industry, and it reduces its rate to 15¢. There is an illustration of what one would call market competition.

Q. But between two railways?

A. Yes. You see it is so difficult to disassociate it because it is to meet the competition of the other carrier, but the purpose of it is because of market competition.

Q. What about this other competition that you yourself have in mind when you say that there is a market for potatoes in central Canada and the producers in Quebec and Ontario are nearer to it. You want the producers of the maritime provinces, who are farther away, to have that market made available to them by lower freight rates. That is another kind of market competition?

A. That is right. For example, it might not be the railways that are reducing the rates to the Toronto market. As an illustration, they might be moving them in by truck.

Q. They might be, but the competitors there are

the two classes of producers, one the maritimes and the other in central Canada?

A. That is correct, Mr. Chairman.

MR. SINCLAIR: Q. How would you suggest that the maritimes would be injuriously affected by competitive rates put into effect in the central provinces in cases that cannot be brought under section 8 of the Maritime Freight Rates Act?

THE CHAIRMAN: Pardon me a moment. To clear it up, may we assume that you are talking of competitive rates between the railways and the truckers?

MR. SINCLAIR: Yes, the simple case of where a trucker puts in a rate in the central provinces and the railways meet it.

Q. My question is the railways having done that, and Mr. Matheson not being able to make out a case under section 8 of the Maritime Freight Rates Act, how does he suggest the maritimes are going to be injuriously affected?

A. I understand your question. Let us assume also that the railways do not even endeavour to meet the competitive rate, that is to say, you still maintain your class rates, but the truck lines reduce their rates or have materially lower rates. Our point, and that is one of the key points in connection with this Intercolonial idea, is that the purpose and intent of the Intercolonial was in order to facilitate the movement of goods into those particular markets. When there is a reduction, or if the situation develops, whether the rate reduction is by trucks or by water lines, then if it is detrimental to our industries then we say that under that Intercolonial set-up ---

THE CHAIRMAN: Under what?

A. Under the Intercolonial setup that was suggested in the brief, there would be an attraction for the railways to put in a rate for maintaining our relationship.

MR. SINCLAIR: The point I am trying to ask you to help me on, Mr. Matheson, is how you can say that the rates of the Maritime provinces under the Maritime Freight Rates Act have been whittled down by the railways extending truck competition competitive rates in the central provinces which do not come within Section 8 of the Maritimes Freight Rates Act?

A. That is why we are here, Mr. Sinclair. As these competitive rates have come in, as conditions and circumstances have changed and the Maritimes Freight Rates Act is no longer effective, as we found out by appealing to the Supreme Court of Canada.

. Now at several points in your brief you say that the Duncan Commission did not take into account the fact of competitive conditions in the Central provinces when they made their Report?

A. That was my interpretation of it, Mr. Sinclair.

Q. Then how can you explain the inclusion of Section 8 in the Maritime Freight Rates Act?

A. That is easily explained, Mr. Sinclair. Section 8 was put in the Maritime Freight Rates Act for this purpose. Let us say that after the Maritime Freight Rates Act was put into force on July 1st, 1927, from say Windsor to Toronto, there was a corresponding reduction in the rates. One of the purposes, as I read Section 8, was to preclude any such action. I will give you a specific illustration, Mr. Sinclair. The salt rates from Retsolf, New York, if I remember correctly, to Montreal or Cornwall

or Ottawa, were reduced immediately after the Maritime Freight Rates Act was put into force. It was reduced by the New York Central Railway in order to meet the reductions that were implemented by the Maritime Freight Rates Act. A complaint was lodged with the Board of Transport Commissioners under Section 8 of the Maritime Freight Rates Act with the result that the rates on salt, or the reduced rate on salt, was cancelled.

Q. Are you suggesting Mr. Matheson, that whether competition exists or not, that the railways should extend competitive rates, to, for instance, the Maritimes?

A. I am including in my answer there, that if there is a case where our competitive position has been nullified as a result of competition, then keeping in mind the purpose and intent of the Intercolonial Railway, we should be given a market competitive rate in order to facilitate moving of traffic into the particular market concerned.

THE CHAIRMAN: Now don't you rely on Section 8 of the Maritimes Freight Rates Act?

A. Only sir, that we cannot get very far under Section 8 of the Maritime Freight Rates Act.

Q. What you say is the purpose of this Act is to give "Certain statutory advantages in rates to persons and industries in the ^{three} provinces of New Brunswick, Nova Scotia, and Prince Edward Island --". That is a declaration by Parliament?

A. That is right, sir, but as the Supreme Court found when we thought that our rates were destroyed by a reduction in rates on potatoes, from various points, for example into the Toronto market, that is competitive rates reductions by the railways -

Q. You mean from various points outside the Maritimes?

A. That is right, sir. The Supreme Court said that Section 8 was applicable to such competitive rates. We had to prove prejudice and the Supreme Court accepted the findings of the Board that there was no prejudice on the ground that inasmuch as there was very little traffic moving, under the truck competitive rates, the prejudice was caused or was the result of the rates moving by the trucks, not by the railways because the railways, while they put in the reduced rates, were not getting the traffic.

Q. What do you find wrong about that?

A. What we say on that, sir, is that we feel that if, as a result of competitive reductions, whether by truck, water, or rail,^{it} renders it more difficult for our industries to get into the Central Canadian market or any other market in Canada, then it should be taken under consideration by the railways to give us an equalizing rate. Let us say competition reduced the rate or resulted in a reduction of rates by so much per hundred pounds. We feel that we should be given a corresponding reduction in order to facilitate our getting into the particular market.

Q. In other words, you say you were prejudiced where the finding was that you had not been prejudiced?

A. We say we were prejudiced, but the prejudice was not within the four corners, sir, of the Maritime Freight Rates Act, including Section 8.

COMMISSIONER ANGUS: Mr. Matheson, if you were prejudiced by low rates given by trucks, and the railways to meet those low rates by reducing^{their} own rates in Ontario, would you still say you were bound to get a lower railway rate because of the strong competition which was disturbing you?

A. Not under the Maritime Freight Rates Act, sir,

because the Freight Rates Act only applies insofar as the railways are concerned.

Q. But do you say that it should be altered so that you would get that?

A. Yes, we say this, that if the purpose and intent of the Intercolonial was such as to facilitate the movement of goods outside, and assuming that the railway was a separate entity, that they could then reduce their rate to meet a market competition whether caused by truck or rail, allowing us to get into a particular market on their own motion or on application by a shipper.

MR. SINCLAIR: In other words, Mr. Matheson, you are suggesting that the railways be forced to meet the competitive rate in Ontario say, so that you could get the advantage of that in the Maritimes?

A. What I have said in my brief is that the Intercolonial, as a separate entity, would make it possible for their officers, without any application as a separate entity, not as Canadian National Railways doing freight rate making, they could then make a reduction to meet a competition which they cannot do now, thus running into complaints of unjust discrimination from other parts of the country from one system, and it is a well settled principle, as you know, before the Board of Transport Commission and the Interstate Commerce Commission.

Q. So therefore, you would turn rate making on the Intercolonial into a device to force lower rates in traffic moving by the Canadian National, National Transcontinental, and traffic moving by the Canadian Pacific. Is that correct?

A. Only where - for example, let us say that we find that our potatoes were up against a stone wall market, the Toronto market, as a result of reduction in rates for potatoes by water line or truck line. Remembering also

that practically all the traffic to the Central provinces moved by rail and if it looked as if that traffic was to be threatened as a result of those reductions outside the area, that we could then go up to the traffic officers of the Intercolonial Subsidiary and say to them "Here is the situation; we are threatened with the loss of this traffic, and take out your tables and figure out what rate would enable us to get into that particular market".

THE CHAIRMAN: Even if the rate is noncompensatory?

A. Mr. Chairman, if you take into consideration the Intercolonial Railway -

Q. Of course you would have the subsidy?

A. There is the deficits. The deficits for some time have been quite substantial. There is only one or two years in which they needed to obtain an overall -

Q. If I understand it, what you mean is this. Under concessions granted to the shippers of these commodities on the Intercolonial line of railways, no concessions should be considered to be unjust or unfair discrimination against anybody else?

A. That is what Section 7 says now of the Maritimes Freight Rates Act.

MR. SINCLAIR: Oh no, that is a question of interpretation of legislation and I would just say that I disagree with the witness' interpretation. I do not intend to argue it now, but I would like to ask Mr. Matheson if he is suggesting that he has as his support for any contention that the short-line mileage between the Central provinces and the Maritimes was not to operate on a commercial basis?

A. What was that again?

Q. That a short-line mileage railway between the

Central provinces and the Maritimes, has he got any evidence to show that it was not to operate on a commercial basis.

THE CHAIRMAN: When you say "the short-line" you mean the Transcontinental?

MR. SINCLAIR: Or the Canadian Pacific - either one.

A. I don't recall seeing anything that the short-line mileage was not to operate on a commercial basis. I did not see anything to that effect.

Q. As a matter of fact, I think you said at page 7 of your brief, where you say:

"It is abundantly clear from the events and pronouncements at the time that an Intercolonial railway by the shortest route would not be attractive as a commercial enterprise without union and that the Intercolonial by the longest route would not be a successful enterprise with union"

That is correct, is it not?

A. Well, the way I have it there " - would not be attractive as a commercial enterprise without union, and that the Intercolonial by the longest route would not be a successful commercial enterprise with union", there is a question mark there, Mr. Sinclair, that that would all depend on the traffic over the line, and so on, so there is still a question.

Q. But you would not suggest, or would you, that by manipulating rates on the Intercolonial, you would preclude the National Transcontinental line or the Canadian Pacific short line from operating on a commercial basis?

A. I would put it this way, It is my interpretation, and I think I can tie it in with the Duncan Commission, that if the line, or let us assume the short-line railway was constructed -

THE CHAIRMAN: What was that?

A. That the short line railway was constructed, that is the short-line according to Sir Sandford Fleming, if the short-line was constructed -

Q. Had been constructed?

A. Yes, if it had been constructed and if the rate structure that was set was not sufficient to facilitate the movement of goods in relation to the density of traffic and one thing and another, and other relevant facts, that there would be rate structure put in to afford persons and industries in the Maritime provinces access to the larger markets in other parts of Canada.

MR. SINCLAIR: I think that by the exhibit I filed, 105, and by the commodity rate and the comparisons I gave you, you will admit that substantial recognition is now in existence as to understanding economic conditions in rates to the Maritime provinces?

A. Up until the finding of the Duncan Commission in 1927. That is when the Maritime Freight Rates Act went into effect.

Q. But wouldn't you agree with me that that exhibit 105 showed that even eastbound traffic had received substantial benefits from the Canadian railways?

A. There is an answer to that, Mr. Sinclair -

THE CHAIRMAN: When you say "eastbound freight" what region?

MR. SINCLAIR: From the Central provinces.

THE CHAIRMAN: Into the Maritimes?

MR. SINCLAIR: Yes.

A. In answer to that, Mr. Sinclair, I notice you have not got Fredericton there at all.

Q. Well, there is only one rate group on the Canadian Pacific. That is correct is it not?

A. There is only one group but Fredericton is not there.

I don't want to go into detail. This is a detailed thing and sometimes it might be rather confusing if you started quoting rates, and I don't want to go into that field. The eastbound rate from Montreal to Fredericton, first class, is the same as to St. John, \$1.22. The westbound rate from Fredericton is the same \$1.06, as you have in that exhibit. Now on April 13th, 1924, the rate from Fredericton was higher than the Schedule A rate -

THE CHAIRMAN: From Fredericton to Montreal?

A. That is right sir. On April 14th, 1924, the railways voluntarily reduced their rates, one block of the Schedule A block, with the result, for example, that from Fredericton for the distance of 460 miles was given the Schedule A basis. St. John was on a lower basis. Now following from that, Mr. Sinclair, the other points in the Maritime provinces have been constructed from the time before the Intercolonial on that group basis, and when you start to compare rates on group basis, mileage-wise or whatever way you want to take them, it is not an equitable comparison and such a comparison has been thrown out time and time again by the Interstate Commerce Commission and the Board of Transport Commissioners as not being fair and equitable.

MR. SINCLAIR: Am I correct now then, that the present rates in effect between the Central provinces and the Maritime provinces, that is traffic moving both east-bound and westbound, are the Schedule A basis less 250 miles, and they still are below that basis. That is correct?

A. The rates between the Maritimes and Ontario and Quebec are a special scale of rates. Whether they are below or higher than the Schedule A rates, in my opinion is immaterial because you have got to go back to

the conditions and circumstances that are basic to those rates .

Q. But it is a fact that they are below the Schedule A rates to an equivalent of 250 miles?

A. Well, Mr. Sinclair, I don't see where the 250 miles comes in there at all so I cannot answer that categorically, and if you take the short-line mileage, according to Sir Sandford Fleming it is 370 miles from Frederiction to Montreal, and using the westbound to carry on that basis and using Schedule A rate, the rate is around \$1.09 first class.

Q. Are you suggesting, Mr. Matheson, that the National Transcontinental or the Canadian Pacific could have been built shorter than they are actually?

A. I am not suggesting that at all. You have got to take a rate structure as you have found it and taking the whole background of it. I think 250 miles less Schedule A is not proving anything, is not probative, until you look at the circumstances and basic background of these rates.

Q. But the railways have, have they not Mr. Matheson, extended considerable assistance to the Maritimes even beyond that set forthⁱⁿ the Maritimes Freight Rates Act?

A. The answer to that is when the Duncan Commission found that the rates in the Maritimes had gone up from 1912 to 1925 on a ratio of 19 to 2, vis-a-vis \$1.55 in the rest of Canada they said "Therefore, that is equivalent to a 20% reduction, and in order to establish the situation that obtained in 1912 we will recommend a 20% reduction in order to re-establish the basis that should have obtained in those years 1912 to 1925".

Q. On eastbound traffic there is nothing to prevent the railways from charging on a mileage basis from Halifax to St. John, is there?

A. There is nothing to prevent them putting in any kind of rate, Mr. Sinclair.

Q. Excepting now, under the Maritime Freight Rates Act, you would be creating a new normal and setting up some new normal I think you would be held down under the Maritime Freight Rates Act.

A. Yes.

Q. So you won't admit that the Maritimes have received from the railways substantial benefits beyond that required by the Maritime Freight Rates Act?

A. I would put it this way - no more than what the situation called for in relation to the purpose and intent of the Intercolonial Railway.

Q. So that, therefore, the railways have and do at the present time, recognize the economic position of the Maritime provinces. Is that correct?

A. Under the Maritime Freight Rates Act.

Q. And beyond it?

A. When you say "beyond" I suppose at times a competitive competition has prevailed in as much as on several occasions you reduced rates in order to get the traffic.

Q . In your brief, Mr. Matheson, you refer to arbitraries, and your suggestion is, as I understand it, that the arbitraries should not increase but should remain constant; is that correct?

A. That is, the arbitraries over Montreal to be maintained constant in order to facilitate the impact of the horizontal percentage increase on all traffic.

Q. Can you give me any example of where arbitraries have not increased along with mileages?

A. I do not remember any offhand. I was going to say, sometimes it is quite difficult to differentiate between a differential and an arbitrary.

Q. Let us stick with arbitraries; we will come to differentials right after.

A. I will finish this. There might be instances where differentials have been maintained, but just offhand I just do not remember of any. I will have to look into that.

Q. Well, the arbitraries over Montreal, I think you say, are merely a convenient way of arriving at one factor in a through rate; is that correct?

A. Let us go back to the definition of an arbitrary.

Q. If you don't mind---

THE CHAIRMAN: Q. That is what the question is; Mr. Sinclair offers you a definition; is that a good definition?

A. Well, my understanding of an arbitrary, Mr. Chairman, is a fixed amount, a fixed amount that may be added or deducted in order to obtain a rate to another point.

Q. Then added or deducted is some rate?

A. Some base.

Q. Therefore it only applies to a through rate?

A. Only to a through rate, yes, sir.

MR SINCLAIR: Q. And you are not suggesting in your definition that that amount should constantly remain at the same X cents, irrespective of what happened to the other factors in the through rate, are you?

A. I think I answered that question or a question of similar purport during examination in the Maritimes, that to be altered only under review---

Q. Mr. Matheson---

THE CHAIRMAN: Q. What do you mean by under review?

A. Well, let us assume that the conditions have changed very materially, and that the traffic could reasonably bear an increase in arbitrary, then the increase should be made.

Q. I suppose what you mean is this, that an arbitrary should not be interfered with except by leave of the Board?

A. That is the answer, Mr. Chairman.

MR SINCLAIR: Q. Well, if there was no arbitrary there, through rates would be figured on mileage; that is correct?

A. Oh, yes; it would be a purely mileage basis of rates.

Q. And so therefore, if an arbitrary is merely a convenient method to fix one factor in a through rate, and takes the place of mileage, why should not arbitraries raise exactly the same as the mileage rates would raise?

A. Well, there is one angle to that, too -- and I consider it basic -- by increasing rates percentagewise, I take the view, and it is purely my own opinion, that it is creating a too great impact on the longer haul rates, and, whether or not for example, your terminal charges might have felt the impact of the increases greater, it might be a case where the shorter hauls might be able to stand or

might justifiably stand a higher proportion, so therefore one of the effects of the arbitrary increases and maintaining them fixed is to lessen the impact of percentage increases on long haul traffic.

Q. You say that is the purpose of arbitraries?

A. One of the purposes -- no, I would not say it is one of the purposes.

Q. I would not think so.

A. I will have to qualify that. One of the ideas of arbitraries is keeping in mind the movement of goods from a point to another point, and there is a competitive aspect there, to facilitate an industry getting into a particular market, or if it is a weak railway, a weak line railroad, and the scale that applies to say the more prosperous railroads is quite remunerative but would not be sufficiently remunerative for the small line, then the arbitrary in that particular instance might be increased in order to give a greater quantum of revenue to the smaller line. There are several reasons and purposes for arbitraries, Mr. Sinclair.

Q. Can you tell me in what way, Mr. Matheson, your argument is different regarding the impact of horizontal increases because you have arbitrary rather than mileage on through rates?

A. The purpose of my proposal in connection with the arbitraries there is that they have been inherent in the freight rate structure of the Maritime Provinces in the first place, and in the second place it lessens the impact of distant rates and facilitates or tends to facilitate the movement of goods from the Maritime Provinces into the other markets of Canada.

Q. Could you not make the same argument, that rates had increased between 1922 and 1948, that there was a long

history of a given rate between points A and B, and therefore they should not be raised; it is the same argument, is it not?

A. No; I think you have got to get behind the purpose of the arbitrary, Mr. Sinclair.

Q. You have a section in your brief dealing with export-import. Now, you will agree with me, Mr. Matheson, that there is a very great difference between an arbitrary and a differential?

A. You know, Mr. Sinclair, there is quite a lot of confusion about what an arbitrary is and what a differential is. There are set definitions; I have used it in my own case. I have known of rate cases where this confusion has been quite extensive, where they got arbitraries and differentials mixed up. Now, how I fix it in my mind as to the relation between a differential and an arbitrary is in relation to the port differential rate structure.

THE CHAIRMAN: Q. In relation to what?

A. The port differential rate structure, that is to say, the rate structure that pertains in connection with export and import rates, sir.

MR SINCLAIR: Q. Well, the differential is based so as to have a relationship; correct?

A. That is right; that is one of the principal reasons for it.

Q. And you have an example of a differential in connection with export-import rates through the ports of Halifax and St. John?

A. St. John, Boston, Portland, and so on.

Q. This port differential rate, Halifax, St. John, equal to New York; correct?

A. Generally speaking.

Q. And Montreal equals Philadelphia; correct?

A. Generally speaking.

Q. And Philadelphia was a differential below New York?

A. It is below New York, right.

Q. And so Montreal would be below Halifax, St. John?

A. Correct.

Q. What you are proposing is that instead of having Montreal a differential below Halifax and St. John, you want to reverse the whole process, and make Halifax and St. John fixed amounts over Montreal; that is correct, is it not?

A. What I propose, Mr. Sinclair, is that in the rate changes that took place since 1938---

THE CHAIRMAN: Q. Since when?

A. 1938; where we had a differential, for example, Mr. Chairman, over Montreal of something like 2 cents or 3 cents per hundred pounds, as the case may be, depending on the commodity, as a result of U.S.-influenced freight rate increases the situation has obtained where the relationship of Halifax and St. John vis-a-vis Montreal has been widened considerably. In Exhibit 47 there are shown instances where the differential is as high, I think, as 40 or 50 cents.

MR SINCLAIR: Q. I thought you agreed with me, Mr. Matheson, that the differential was Halifax, St. John, New York, with Montreal equal to Philadelphia, at so much below that level?

A. That is correct.

Q. That is correct; there was no relationship between Montreal and Halifax?

THE CHAIRMAN: Montreal and where?

MR SINCLAIR: Halifax.

THE WITNESS: In the export and import rate structure that obtained up until 1938, there was just this differential relationship that obtained in the case of St. John and Halifax over Montreal.

MR SINCLAIR: Q. It never existed over Montreal, but you agreed with me it was so much under?

A. Just a second; there is another angle to this. But as a result of U.S.-influenced adjustments the export and import rates to the ports of St. John and Halifax then increased generally in relation to the increases effectuated to Boston, New York and Portland from Canadian originating points -- follow me? However, in respect of Montreal -- and this is important -- now, you can move around, but this is very important, Mr. Sinclair: in respect of Montreal the domestic rate plus terminals applies lower than the export and import rates.

Q. So that you have---

A. Now, while the export and import tariff might indicate that these rates have followed in line with Philadelphia, and so they are not the rates that move the traffic, the result is that because of conditions and circumstances in the United States our rate structure, speaking of Canadian rates, has upset the balance in relation to traffic through St. John and Halifax vis-a-vis Montreal. Now, when the ports are open at Montreal and Halifax and St. John, I doubt that any shipper is going to send any traffic through the ports of Halifax and St. John, when there is such a spread of 45 or 50 cents per hundred pounds, where it used to be only 2 or 3 cents per hundred pounds.

THE CHAIRMAN: Q. That is, Montreal?

A. That is right, sir.

MR SINCLAIR: Q. Am I correct, that ever since these rates have been in effect, the domestic rate plus terminals acted as a maximum?

A. That is absolutely right.

Q. And it still operates to-day with regard to Halifax and St. John just as it does to Montreal?

A. Yes; but you must remember that the spread has become so wide as a result of these U.S.-influenced adjustments -- for example, in Canada only an increase of 20% and 8%, whereas on the average increase in the United States it is something like 61%.

Q. Isn't your plan to make Halifax and St.John over Montreal rather than have Montreal so much under Halifax and St.John?

A. All we are asking---

Q. Is that correct?

A. All we are asking in my brief, in a few words, is that our relationship with Montreal be maintained during the summer months.

Q. Even though the basis of the differential is the relationship of New York to Philadelphia?

A. I will give you the converse of that, Mr. Sinclair.

Q. Is that right?

A. I will give you the converse of it in answer to it.

Q. All I am asking you is, is what I said right or not?

THE CHAIRMAN: Would you please repeat the question?

MR SINCLAIR: I asked the witness if he was not attempting to make Halifax and St.John something over Montreal rather than maintaining the relationship on which the rates were based, that is, the relationship between New York and Philadelphia whereby Philadelphia was something under New York.

THE CHAIRMAN: Well, hasn't he answered that? Doesn't he say that when the three ports, Montreal, Halifax and St.John, are open, all the advantage goes to Montreal?

Q. Isn't that what you say?

A. That is what I say, sir.

MR SINCLAIR: But, my lord, I am trying to ask the witness if he will agree with me, if these differentials

were based on the relationship between two American ports.

THE CHAIRMAN: Yes, but why should they necessarily be so based all the year round?

MR SINCLAIR: Q. Well, if that agreement was not maintained, of maintaining the relationship between New York and Philadelphia, in the relationship between Halifax, St. John and Montreal, what do you think would happen on traffic moving west from west of the Detroit gateway and routed through Canadian lines? You would lose it, would you not?

A. There is a situation where the rate is coming from the United States point and where the Canadian carriers would control the rate. That traffic -- well, we are not getting it anyway in the summer months.

THE CHAIRMAN: Q. Would you please speak up? There is an awful noise downstairs right under where we are sitting, and it is difficult to catch what you say.

A. We are not getting the traffic or any part of it in the summer months by the ports of St. John or Halifax anyway, Mr. Sinclair.

MR SINCLAIR: Q. Say they took the route out, wouldn't that affect the Maritime ports both summer and winter?

A. We are not asking that they take the route out.

Q. You are not asking that they do, but wouldn't that be the result of your suggestion?

A. That the U.S. lines would refuse to participate in a joint through rate to St. John and Halifax?

Q. They would route it all American, so that they would not have to get this low basis that you are suggesting?

A. As a matter of fact, I think we are discussing at cross purposes. We are not getting the traffic during the summer months anyway, Mr. Sinclair, and the rates in Canada

are predicated on U.S. conditions and circumstances. We are saying that in so far as our relationship with the port of Montreal is concerned, it should be maintained through the summer months. What they do in the wintertime which brings us in that other particular aspect -- then we could be placed on Boston, New York and Philadelphia, in relation to New York, Boston and Philadelphia, in the winter months.

Q. In other words, you are asking this Commission to recommend an agreement that port differentials that have been in existence for some fifty years be overturned, whether the Maritimes gained by that or not, or the railways gained by that; is that right?

A. If for example during the summer months---

Q. Would you please answer me?

A. I will answer that this way, because these things cannot be answered the way you want me to. In the summer months---

Q. I only want the facts.

A. Well, I am trying to give them to you. We want to meet on this. In the summer months the railroads should be in maintenance in relation to the port of Montreal, so that we could participate in that traffic. If the United States lines in relation---

THE CHAIRMAN: Q. If you what?

A. If the United States lines in relation to the port differential structure wishes to meet that competition, it is their option to do so.

Q. Well, don't you think they would?

A. I think so. I think they would be inclined to. I think they would if there was any volume of traffic involved; I think they would be willing to meet the situation.

MR SINCLAIR: Q. So the result of it would be that

this port differential agreement which has been in existence for so many years would be overturned, and that the railways would gain nothing but would lose by carrying traffic without necessity some additional four or five hundred miles; that is correct?

(Page 7377 follows)

A. It was not overturned in 1942 when the Wartime Prices and Trade Board refused to allow an increase in Canadian export and import rates, and the American lines still continued their adjustment down to United States ports.

Q. How long did that exist?

A. Until the termination -- I just don't know the exact date -- I think until the termination of Order 92.

Q. I am instructed we always increased our rates to maintain the differential. You say that is wrong?

A. The Wartime Prices and Trade Board in the 1942 application for an increase, ex parte case 142, refused to allow an increase in the export and import rates from Canadian originating points to the ports of Halifax, Saint John and Montreal.

Q. I am instructed that where the rates were related to rates to American ports that an exception was made and that the rates were increased. You say that is wrong?

A. The statement I made is according to my memory, that Canadian export and import rates were not increased. I would have to check it.

Q. My instructions are that where any rate was related to an American rate it was increased and the relationship maintained?

THE CHAIRMAN: What do you mean by where any rate was related to an American rate? In the first place, this was during the war.

MR. SINCLAIR: Mr. Matheson was suggesting to me there was an exception due to the fact of the freezing order of the Wartime Prices and Trade Board. My instructions are that an exception was made for the very reason that I am suggesting. I am suggesting that

under normal circumstances -- the war may have had some effect -- that you cannot afford to disturb these port relationships in the manner which Mr. Matheson suggests without very serious consequences to the movement of traffic.

THE CHAIRMAN: I suppose the consequences you must mean are the action that might be taken by the American railways.

MR. SINCLAIR: Yes, Mr. Chairman, and also the fact that the only result would be an unnecessary movement of goods for 400 or 500 miles with no recompense to the railways whatsoever.

THE CHAIRMAN: When you say "unnecessary movement of goods," between what two points?

MR. SINCLAIR: We will say, for instance, that there are adequate facilities to handle export traffic from Toronto through Montreal.

THE CHAIRMAN: You have Montreal in mind on the one hand, and Saint John and Halifax on the other when you talk of an unnecessary haul?

MR. SINCLAIR: Yes.

THE WITNESS: In regard to that so-called unnecessary haul there is a lot of legislation, as you know, about encouragement of traffic through the Maritimes ports. In the general freight rate investigation case there are a lot of quotations referring to the various Acts, like the Canadian Northern Act, and the various Acts about facilitating the movement of Canadian goods through Canadian ports.

MR. SINCLAIR: Q. Are you suggesting the railways have not facilitated such movements?

A. As far as the ports of Saint John and Halifax are concerned, by the increasing of the rates to the degree they were because of United States influenced

conditions, and not maintaining the relationship over Montreal, I would say that we have not been getting --

Q. You are not suggesting that the relationship on grain moving from Buffalo to New York should not be maintained to Saint John and Halifax, are you?

A. No, you have maintained that generally speaking.

Q. Just as we have maintained the relationship of the differential between New York and Philadelphia in dealing with Halifax, Saint John and Montreal? Correct?

A. No, not in so far as Montreal is concerned because our spread has been widened in relation to Montreal.

Q. I thought you agreed with me that was the case, that domestics plus terminals not only to Montreal but also to Halifax and Saint John always operated as a maximum just as they do to New York and Philadelphia?

A. Yes, this situation has obtained because the increases in United States rates are about 60 per cent whereas increases in Canadian rates, up to the present time, work out to around 30.68 per cent. That has created or widened the spread. In other words, our Canadian export rates -- and I emphasize this -- generally speaking have been increased to the extent of approximately 60 per cent, and this is where the domestics plus terminals comes into play. Montreal obtains the benefit of the domestic plus terminals whereas we only obtain that in a few cases where export and import rates hit the maximum.

Q. The reason for that being because Montreal is closer, is a shorter haul? That is correct?

A. That is correct. You see, Mr. Sinclair, if you take the two rates at the level and apply your

differential to it for the export and import rates, as far as the maritime ports are concerned that would tend to relate to the export and import rate structure that used to obtain.

Q. I would just ask you this one question. You are trying to destroy the port differential agreement, and the maritimes are prepared to take the consequences of such destruction?

A. I am not asking that the port differential agreement be destroyed. I do not believe that necessarily follows. All I am saying is that, in so far as Saint John and Halifax, during the summer months, we should be maintained on a competitive keel with the port of Montreal.

Q. You do not think that would destroy the agreement? If that is your view, just say so.

A. I do not think it would. It is a matter of negotiation.

THE CHAIRMAN: Q. You do not think there would be any action by the United States carriers?

A. I believe perhaps the United States carriers might come into the picture there. Frankly I would not want to see the export and import rate structure that has obtained for years destroyed, in so far as we are concerned, during the winter months when we are very much interested in it.

MR. SINCLAIR: Q. You want the benefit in the winter time. You want the American lines to give you those benefits in the winter time, and you want to destroy the relationship that has existed in the United States for many, many years?

A. You are assuming it is going to destroy the relationship in the summer months.

Q. You want it coming and going?

A. If you put in an export rate from Toronto to the port of Halifax -- follow me -- if you put in an export rate from Toronto to the port of Halifax which was 2 cents per 100 pounds over Montreal; if you put in that rate now from Toronto to Halifax instead of having 30¢ or 15¢, or whatever the case may be, over Montreal, if you put in a rate 2¢ over that, it does not necessarily follow that is going to destroy the port differential rate structure. That has already been done. In 1938 exceptions were made in such commodities as newsprint. Speaking of New York, exceptions were made in the case of such commodities as newsprint, alcohol, and quite a few other items, which also involved Toronto, and those rates were subsequently extended to Portland, using Portland, but that did not upset the differential relationship in so far as New York is concerned. There is my answer.

THE CHAIRMAN: Q. Was that particular action taken as a result of any conference with the United States lines?

A. I understood that the shippers were much concerned, the shippers of newsprint and some other commodities, over the loss of export markets, and they did not want to have their rates increased in line with the increase that was effected on March 28, 1938, so they went to the railways, and the railways took a certain list of commodities and exempted them from these increases.

Q. What railways?

A. Our Canadian railroads. For a time even the port of Portland took a higher basis, and then within the last year or so they have again equalized the rates

for Portland, but the rates to Boston and New York are still higher than to Halifax, Saint John and Portland.

Q. On newsprint?

A. On newsprint, and there were several other items. I will give you a list of them. There was acetone, acetic acid, matte, paper and paper commodities, newsprint paper, tires, wood pulp, alcoholic liquors. There might be one or two more but that is the list I have here.

MR. SINCLAIR: That is all I have.

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CROSS-EXAMINATION BY MR. O'DONNELL:

Q. I have a few questions. Mr. Matheson, the so-called purpose and intent, as you might put it, of the Intercolonial Railway, have been reviewed on a number of occasions by other commissions, have they not?

A. Yes, Mr. O'Donnell.

Q. And as recently as the Sirois Commission in 1939 and 1940?

A. That is right.

Q. And I believe you point out in your brief that they refused to agree with the contention which was advanced on behalf of the Maritime Transportation Commission and various provinces, that the purpose and intent of the railroad was as outlined by you, that is, that the road should be operated on grounds of national policy with freight rates not based on commercial considerations?

A. I think, if I remember correctly, Mr. O'Donnell, that in connection with the New Brunswick representation they refused to consider the segregation of the Intercolonial. That is what you mean by that?

Q. Yes.

A. And they also refused to take cognizance of the proposal of Sir Andrew Rae Duncan regarding the extension of the powers of the Board of Transport Commissioners.

THE CHAIRMAN: Q. Whose suggestion?

A. The proposal of Sir Andrew Rae Duncan as to the extension of the powers, as contained in the Duncan Report, which proposal was put up by us, and I believe by the province of Saskatchewan.

Q. Just what was the proposal made by you?

A. The proposal made by us is that ^{the} recommendation of the Duncan Commission regarding the extension of the powers of the Board of Transport Commissioners to investigate a particular industry to assist in rate adjustments --

Q. That is, you say that the Duncan Commission recommended that they should be given that power?

A. That is right.

Q. You wanted that adopted, but it was not adopted?

A. That is right.

Q. When you say it was not adopted do you mean in this legislation, the Maritime Freight Rates Act?

A. That is right. It was not adopted in the Maritime Freight Rates Act.

MR. O'DONNELL: Q. At page 10 of your brief you say:

"The Sirois Commission dismissed the renewed claims by adopting the finding of the Duncan Commission, predicated on conditions and circumstances" --

and so on. All I am saying to you is that the Sirois Commission reviewed the various theories and principles that you have put forward to this Commission?

A. I am speaking from memory, but I think one of the things they turned down was in connection with the competitive rate angle. I think that is what you have in mind.

Q. That is one, and also the suggestion that the road should be operated on into the west or towards the west on grounds of national policy with freight rates not based on commercial considerations. These things were considered by the Sirois Commission also, were they not?

A. I am just looking for it. Would you mind giving me just a moment. I was just looking at page 10. What is the question?

MR. O'DONNELL: Perhaps the reporter will read it.

Reporter reads: "That is one, and also the suggestion that the road should be operated on into the west or towards the west on grounds of national policy with freight rates not based on commercial considerations. These things were considered by the Sirois Commission also, were they not?"

THE WITNESS: You mean I made that suggestion?

MR. O'DONNELL: Q. The Maritime Transportation Commission and the Province of Prince Edward Island.

A. I did not make that suggestion.

Q. Your brief supported that of the Province of New Brunswick before the Sirois Commission.

A. Put it this way; the New Brunswick government supported our brief.

Q. It is six of one and half a dozen of the other. In any event, these matters have all been reviewed before, and as you say on page 10, this

consideration was turned down by the Sirois Report.

That is correct, is it not?

A. The considerations that were presented before the Sirois Commission were discussed, but they were not acted upon.

Q. That is right, and they were turned down, incidentally?

A. Of course, I believe ---

Q. In so far as operation ---

THE CHAIRMAN: Pardon me, but were they dealt with and dismissed?

MR. O'DONNELL: That is my understanding about it. I do not intend to take the time of the Commission now to review what was said in the report. I might simply say that at page 250 of volume 2 of the Sirois Report the Commission will find these words:

the

"It is suggested in/supplementary brief of New Brunswick that resolution 66 also involved the extension of the Intercolonial into the Great West to be operated on grounds of national policy with freight rates not based on commercial considerations. There is no citation of documentary support for this contention, and we can find no contemporary evidence that this future for the Intercolonial was in the mind of anybody at that time."

The suggested operation of the road separately from all other roads was also dealt with, but as I said, I do not intend to take any further time of the Commission at this stage to review what was said there. It can be done at a later date.

Q. On page 10 of your brief, Mr. Matheson, there is a paragraph reading:

"As the general conviction, even before the construction of the Intercolonial Railway, was that unremunerative rates would have to be assessed in order to develop traffic, it is abundantly clear that no private company would have undertaken to run the railway without a Government subsidy."

That is your general conviction. What is your basis for making that statement? What evidence have you in support of that, or is it another one of your own inferences?

A. This is not mine, Mr. O'Donnell. This deduction was obtained from the historical reviews which I made, and I think perhaps I can quote you --

Q. It is your conclusion based on what you say you have read?

A. If you wish to have it, there are some historical references that cover that particular point. If you wish to have them I can quote them, but I have not got them right here. I was not living at that time.

Q. It is your conclusion based on what you have read?

A. A conclusion predicated on my research.

Q. Made by you?

A. No, no.

Q. Then, where do we find it?

A. I will get that information for you, Mr. O'Donnell. I will have to go through a lot of material, but I can get it for you.

Q. You also put forward the suggestion, as I understand it, and made the proposal that due to certain obligations resulting from Confederation, there

should be a differential in freight rates in favour of the maritime provinces at the level of differentials which applied before 1912. You suggest that the maritime provinces should also have in their favour the maintenance of certain differentials which existed at or prior to 1912?

A. Where is that in my brief so I can see exactly what it says?

Q. I do not know where it is, but is that not what you are propounding, that the differential which existed prior to 1912 in favour of the maritimes should be maintained?

A. The finding of the Duncan Commission was that up to 1925 or 1927 the differential, if you call it a differential -- the discrimination between had been upset, so to speak, and that it was restored by the Maritime Freight Rates Act. What we say is that changed conditions since 1925 and 1927 have to a degree nullified the efficacy of the Maritime Freight Rates Act.

Q. You contend that resulting from Confederation certain obligations applied which entitle the maritimes at all times to a differential in freight rates at the level which applied before 1912?

A. That in effect was the finding of the Duncan Commission.

Q. That is your contention?

A. Yes, we support that except we project it now.

Q. I should like to put on the record at this point a short extract from the Sirois Report, volume 2, page 263, where the Commissioners say:

"While it may be argued that the Duncan Commission found that freight rates after 1912 were higher than it was ever intended the traffic should bear, and that the preamble to the Maritime Freight Rates Act admits this finding, it cannot be said that any contractual obligation to maintain rates at the differential applicable before 1912 ever existed. Intentions with respect to freight rates in so far as they had been declared, were declared solely as a matter of public policy, and these declarations never assumed the character of a contract."

THE CHAIRMAN: A contract between what parties? How could there have been a contract? Is it something in the Confederation terms?

MR. O'DONNELL: As I understand it, the contention of the maritimes is that there was a contract. Mr. Matheson's brief sets out resolution 66, and various other extracts from the old records.

THE CHAIRMAN: Q. Mr. Matheson, you have just heard this extract from the Sirois Report in which they say there was no such contract?

A. The Sirois Report --

Q. Do you say that is wrong?

A. The Duncan Commission said that --

Q. I know that, but I am referring to this one thing. You have heard this extract read, and they say there was no contractual obligation?

A. I agree with that. They could not find anything, but it is a policy that was carried on. The lower level of rates that prevailed on the Inter-colonial Railway system prior to 1912 is in our view, and the Duncan Commission's view, rightly to be interpreted as fulfilment of the successive pledges that surrounded the railway from

its inception.

MR. O'DONNELL: The Sirois Commission, having gone into that, say that there is no contractual basis for that, and they cannot find anything to maintain it.

MR. F. D. SMITH: I think they are dealing with the New Brunswick argument. I have no doubt my learned friend wishes to be fair. As I understand it there was an argument made by the province of New Brunswick with respect to paragraph 66, was it not, in the pre-Confederation agreement, the London Agreement so-called, of 1865. As I understand it, that is the argument which was submitted by the New Brunswick government, and which was not recommended for acceptance by the Sirois Report. I think paragraph 65 is the one in which the recommendations in the Duncan Report are on part based. Does that not clear it up?

MR. O'DONNELL: I do not put it quite as broadly as that. We will have occasion to argue later, but whether, as Mr. Matheson said, they supported the New Brunswick brief or New Brunswick supported their brief, I submit the intention was to put the argument forward on behalf of the maritime provinces, by one or other of the provinces or by the Maritime Transportation Commission on behalf of them.

THE CHAIRMAN: When reference is made to paragraph 66 --

THE WITNESS: That is the pre-Confederation resolutions.

THE CHAIRMAN: In the pre-Confederation resolutions?

THE WITNESS: The London Agreement.

MR. O'DONNELL: They are all inter-twined. We will have to argue that out later, but I do not want

to at this point.

THE CHAIRMAN: Mr. Smith referred to two numbers, 66 and 65.

MR. F. D. SMITH: The resolutions of the London Conference.

THE CHAIRMAN: The London Conference pre-Confederation.

THE WITNESS: That is right.

MR. O'DONNELL: There were the two resolutions, 65 and 66.

MR. F. D. SMITH: They are set out in Mr. Matheson's brief at page 2.

(Page 7397 follows)

MR. O'DONNELL: Now Mr. Matheson, the Duncan Commission and the ensuing Maritime Freight Rates Act adjusted the matter of rates in the Maritimes on the basis of 1912 and reduced the rates -

A. If you don't mind, not exactly, Mr. O'Donnell; it was a broad measure.

Q. Oh yes, a very broad measure which was said by the Commissioners, but the object of the Act was to reduce the increases which had reached, on a percentage basis, the figure of 192 in the Maritimes whereas in the rest of Canada they had only gone up to 155?

. That is right.

Q. And by this broad measure of the 20% reduction the Duncan Commission held that the position which had prevailed between 1912 would be re-established?

A. That is the relative position.

Q. And I take it you would agree with Premier MacDonald of the Province of Nova Scotia when he said at page 6455 in Volume 755 of the 30% Case, "It is true that under^{the} Maritime Freight Rates Act of 1927 that that Act, as I understand it, simply restores the old relationship which existed prior to 1912 between the rates in Eastern lines and the one in the other lines of Canada". Would you agree with that?

A. Yes.

Q. Then from 1927 forward you agree that is the case, that railway Railway tariffs in Canada, when they varied, that the Board of Transport Commissioners were authorized under the terms of Section 3(2) (b) to vary the rates which were established by the Maritime Freight Rates Act?

A. That is when they could indicate that the

cost of operation was higher than July 1st, 1927.

Q. And under 3(2)(c) they could adjust and vary such substituted tolls or rates from time to time as any new industrial or traffic conditions arise, but always in conformity with the intent of this Act, as expressed in Sections 7 and 8 and other relative sections hereof.

THE CHAIRMAN: That is the important part?

A. That, together with Section 8, sir.

MR. O'DONNELL: Now what do you suggest is wrong with that law as it stands. Why doesn't that provide the Maritime shipper with all the protection that is required?

A. Well, I think I have explained it this morning, Mr. O'Donnell. In regard to competitive rates we are actually stymied for various reasons and that in the event that we could - and I am not sure that in one or two instances that we could indicate prejudice, all it would mean would be the cancellation of the rates in some other territory, and we in the Maritimes are very loathe to do that.

Q. But under the law as it stands, do you not agree with me that your statutory preference is protected at all times because you may, if you can point to a competitive rate anywhere else in Canada, which prejudicially affects you, you can apply and get redress to the extent that that rate must be removed so that your preference is maintained?

A. We thought we would, Mr. O'Donnell, until the Supreme Court decision found otherwise.

Q. What did the Supreme Court say that is contrary to what I suggest under Section 8 of the Maritimes Freight Rates Act?

A. Under Section 8 of the Maritime Freight Rates

Act you will note the words "Destroy or prejudice".

Q. That is a matter of fact in usual instances, isn't it?

A. We accepted it that those competitive rates when they came in if they were destroyed rate-wise that immediately that adjustment was made, the machinery would automatically go into operation that would result in a corresponding reduction, but on going to the Supreme Court of Canada we found that (1) we had to prove prejudice and () that in any event if there was prejudice, all the Board could do was to cancel the rate complained about.

Q. Well, why shouldn't you have to prove prejudice? Because if you are not affected what right had you to complain? Isn't that a fair position to have the law in as it is?

A. Insofar as we were concerned, Mr. O'Donnell, we took the stand that the destruction of our relationship was acceptably important to us and too, when you are trying to prove unjust discrimination under the Railway Act, which then comes into play, it is one of the most difficult things for a shipper to prove. He has tremendous onus upon him in that respect.

Q. How else could the law be administered? Here is a law which provides a statutory preference bequeathed by Section 8 of the Maritime Freight Rates Act and in any instance where a shipper in the Maritime provinces can show that his statutory preference is destroyed, he has recourse to the Board of Transport Commissioners and to the Supreme Court, to have that preference maintained. What more is required than that, Mr. Matheson?

A. By maintaining that preference, the only way they could maintain it is on proving the rates pre-

judicial.

Q. Well what is wrong with that, when the law says that the Board shall disallow any tariff that destroys or delays progress?

THE CHAIRMAN: Then the result is to revert to the existing figures. I think Mr. Matheson's complaint is that the Board has not the right to re-establish the tariffs. You say that not only should the Board disallow the tariffs but they should then go further into the whole situation and if necessary fix a new tariff?

A. A corresponding reduction from the Maritime point of view.

MR. O'DONNELL: We are speaking of competitive rates, Mr. Matheson, which you suggest have been put into effect somewhere else in Canada than in the preferred territory. Now competitive rates are rates which the railway may put in or not as they choose?

A. That is correct.

Q. Now why then should you suggest that the railways should be obliged to maintain a competitive rate, and that is what you are saying when you ask that the law be changed to give the Maritime shipper an adjustment, when in fact, he is not shipping in competition or prejudicially affected by the rates somewhere else in Canada?

A. Let us assume, Mr. O'Donnell, a shipper is shipping potatoes from the Maritime provinces to Toronto?

Q. Yes.

A. And there is a special commodity rate, a special competitive rate, which was the case that actually obtained, which was reduced. We feel that under Section 8 we could step in and have that reduced, but as it developed

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THE CHAIRMAN: Because the railways have reduced

the rate in Central provinces?

A. That is right sir, but we say, and the statistical data submitted in the evidence indicated, that most of the traffic was moving by truck. Therefore there was no prejudice?

Q. By the railways?

A. By the railways.

Q. Excuse me, Mr. O'Donnell. That is something I think I gathered from something you said earlier today. Is it not this, that here you wish to have access to a certain market in Central Canada and you find now that the railways in Central Canada are not being used at all perhaps and that the competition in that market is by carriage or by truck?

A. That is right.

Q. Would you still say then that Section 8 should be amended so as to protect your advantage against competition by truck as well as by railway? Supposing the railway rates had not been reduced, or they had abandoned the attempt to compete, and the whole market went over to trucks. Do you want the Act amended so that in such a case you would have freight rates on railways in your part of the country which would enable you to compete with truck rates in the other part?

A. That might be done sir, -

Q. Is that what you want?

A. That is one of the reasons why we are suggesting the separate entity of the Intercolonial Railway, so that we can get into those particular markets.

MR. O'DONNELL: Whereas, under the law as it stands all the railway is precluded from doing is putting in a rate with prejudicial effects upon you and I suggest that that is sufficient to maintain your statutory preference?

THE CHAIRMAN: Mr. Matheson's idea is that statutory preference should be extended beyond railways, Mr. O'Donnell, so even if the railways did not put into effect a competitive rate or decided to abandon the attempt to compete with the trucks in this particular commodity in this particular area, that nevertheless, the railways in the Maritimes should have their rates reduced to permit competition for goods from the Maritimes by rail to meet the competition of goods by truck, in Central Canada. That is right isn't it?

A. That is in essence what it amounts to.

MR. O'DONNELL: In other words the railways might have a special rate virtually for anything in order to give a truck competitive rate?

A. I would not say that. That is rather extreme. The whole thing would have to be reviewed and approached reasonably.

COMMISSIONER ANGUS: Mr. Matheson, you are assuming in this case, I suppose, that under the Maritime Freight Rates Act as enacted, the Government would make good to the railways their loss of revenue?

A. Definitely sir.

MR. O'DONNELL: And on your theory, the railways would then be obliged to compete and meet the competition by trucks whether they thought it was a good thing to do or not?

THE CHAIRMAN: Do you mean in Central Canada?

MR. O'DONNELL: From there down to the Maritimes.

A. That would be a matter, as I would put it, of negotiation, of sitting down and looking over the whole situation. I do not think it should be forced upon them. It is a matter of appraising what the exact situation is so that everything can be considered and see what adjustment is necessary.

THE CHAIRMAN: Well, I suppose the amendments to the Act which you promised to give us a few days ago, will make that point clear?

A. Yes sir, we will do that, sir.

MR. O'DONNELL: Virtually what you are suggesting is something which is directly contrary to the recommendations contained in the Duncan Commission report, and that is -

A. What page?

Q. Page 24. You are suggesting an 'arbitrary interference on the part of the railway Commission or the Maritime shippers with the business judgment of the railway companies or that there should be any confusion between trade development that can reasonably be expected from a railway rate structure, and trade development that must be a matter for public or government responsibility, quite apart from rate structure' " You are suggesting that the railway should be obliged to put in the rates you speak of in order that the truck competition elsewhere in Canada, should be offset?

A. Mr. O'Donnell, as I read that section, the Duncan Commission was discussing the Railway Act there in connection with changes?

Q. Well, the Duncan Commission says there "In other words, what a railway administration might concede, in the exercise of its judgment of what was good business or might ultimately be good business for itself, seemed to us to be demanded as a matter of right by the trader so that his own business might be profitably developed, whether the operations of the railway were remunerative or not". Now that is what you are suggesting, whether such rates would be remunerative out of the Maritimes by the railways, you are suggesting that they should be imposed upon the railways?

THE CHAIRMAN: With subsidies?

A. I qualify that with the statement that the particular case in point should be subject to review or study before a decision is made.

MR. O'DONNELL: Isn't that what the law now provides for, that there should be a study made and if you are sure that there is any prejudice suffered you are entitled to have your statutory preference maintained?

A. That is what we are suggesting. We do not feel in the case of a market competitive situation that may develop, that in all instances it should be automatically reduced. What we do say is that it should be a situation that should be considered and looked into with management to see if the adjustment is necessary.

THE CHAIRMAN: Who would do the considering? Have you in mind a Board?

A. I think perhaps in the initial stages a matter of that kind could be carried on between the shipper or the shipper's representative, and the carriers, and failing access there (and I am still keeping in mind managerial prerogative) could be referred to the regulatory body for consideration.

MR. O'DONNELL: Isn't that what is done at the present time?

A. That is being done at the present time but here is one difference that stands out, Mr. O'Donnell. You see under the Railway Act you might be very desirous of giving us an adjustment, say from Moncton to Toronto, but you would feel that you would have to make corresponding adjustments or you would be liable to charges of unjust discrimination, and even the traffic volume and the revenue you would get might be compensatory but you feel on the overall picture you might look at it and under those

circumstances you might say "Well, we just can't do it because we are going to leave ourselves open to a complaint of unjust discrimination", and that is the reason we suggest that the purpose and intent of the Intercolonial carried through to Toronto operating as a separate railway, would give you the power, or the Intercolonial subsidiary the power, to go into the matter and make that adjustment.

THE CHAIRMAN: That is to say, you would have it as I said it this morning, so that the Railway Act should say that a reduced rate put into effect in the way you say, would not be considered unjustly discriminative?

A. That is correct sir.

MR. O'DONNELL: What I do not understand, Mr. Matheson, is why you should suggest that the railways should be obliged to put in a rate to meet a rate in some other part of the country which does not in any way prejudice your shipper. That is what I do not understand, and that is what you suggest, as a I comprehend it?

A. Well, if the competition is increased, and a particular shipper might lose business -

Q. Supposing a rate is put in, say between some point west of Winnipeg and Winnipeg, concerning traffic that you are not interested in at all, why should you be allowed to suggest, as I understand you are attempting to do, that some similar rate should be put in from the Maritimes?

A. There have been a number of cases -

THE CHAIRMAN: From the Maritimes to another market in Winnipeg?

MR. O'DONNELL: In Winnipeg. That is what my friend, Mr. Matheson, as I understand it, is suggesting my lord.

A. There have been a number of rates put in under

the Maritimes Freight Rates Act as originally set up, that we think we could have stepped in and had cancelled, but we were reasonable about it and we did not consider there would be any advantage to us. I am not speaking of competition right now; I am speaking of a general class rate. As far as that general class rate was concerned, we felt that we were not interested in the particular market, so we refrained from going into that and having it cancelled which we feel we could have had cancelled under the Act.

Q. Whether or not you are prejudicially affected or not, if you are not prejudicially affected then you intend to impose on the railways, rates from the Maritimes into points which are not competing with the points where the competitive ^{rate} is in effect?

A. I assume we would be prejudicially affected - put it this way, to some degree.

Q. But you must establish that degree, must you not, to the satisfaction of somebody?

A. As I said before, Mr. O'Donnell, it is one of the most difficult things before the Board of Transport-Commissioners and the Interstate Commerce Commission to prove prejudice.

Q. At the present time on the law, as it stands, if you can establish that you are in any way prejudiced, you are entitled to have your statutory prejudice maintained and the prejudicial rate disallowed. The situation as to the Maritime Freight Rates Act extends to that point?

A. As the Maritime Freight Rates Act stands at present, that is the power that we can have. We have to prove prejudice on competitive rates, and if we do prove prejudice, the effect of the Act is to cancel the rate.

Q. And whether it is competitive rates or any

other rate isn't that fair that you should have to prove prejudice before you can insist on the railways' managerial preferences being interfered with?

A. The Act says that where it is other than competitive rates, it does not specify the point about proving prejudice. The point is if they do not have some precautionary measure there, that can be under the guise of competitive rates, or any other action that might be taken, the benefits that were obtained from the Maritime Freight Rates Act - when I say "the benefits" the reductions that were made clearly equalized in some other sections in order to wipe out the benefits. So you would have in one instance the Dominion Government paying subsidies without assisting, which was the purpose and intent of the Act.

Q. Well, all I would like to record at this point, my lord, is the reference to the case in which this matter was discussed and it will be found in 46 Canadian Railway Cases at page 161, and that is a judgment of the Supreme Court of Canada on Appeal from the Judgment of the Board of Transport Commissioners in the so-called Potato Case" which will be found in the same volume of Reports, or rather 44 C.R.C. at page 289 in the Supreme Court. There is one brief extract here which I think is pertinent and which sets the situation out as it is. Mr. Justice Hudson, during the judgment of the Court said at page 164

"We agree that competitive tariffs established outside of a select territory are within the contemplation of this section and when such tariffs prejudicially affects 'the statutory advantages then the Board shall not', said



"the Chief Commissioner, 'approve nor allow' such tariffs, and we agree with the Chief Commissioner that these words necessarily imply authority to cancel any rates having such effect but where any particular competitive rates as that effect must in each case be a question of fact to be determined by the Board itself."

Now I suggest, Mr. Matheson, that in the potato case when the facts were looked into it was found that you suffered no prejudice, that your shipments of potatoes had increased during the period that you were complaining of and that you could not point to any prejudice and therefore, there was no reason to cancel the rates in Ontario. Does that not fully protect your rights?

A. Mr. O'Donnell, you quoted that case in the Supreme Court, 46 C.R.C. 161. I would suggest also that the other Supreme Court case be quoted, 41 re Maritime Freight Rates Interpretation, 41 C.R.C. at page 56.

Q. Any others you suggest? The one I am speaking of is the one that dealt with the matter.

A. That also gives some specific illustrations there in connection with the interpretation. I see your point, Mr. O'Donnell, quite clearly and as you remember and I want this clarified because in the potato case you were dealing with competitive rates. Now in connection with Section 8 of that Act, of the Maritime Freight Act, if immediately after that Act was put into effect, -and I gave the salt illustration as one of them, -they started reducing rates on various commodities to Montreal or Toronto or other points, the purpose and intent or the relative basis of the rates that had existed would have been equalized at other parts of the country. The final result is, and you might not be able

to prove prejudice in that particular case, the final result is you would have an instance where the Dominion Government would be paying the reimbursement under the Maritime Freight Rates Act but at the same time as that reduction was made there was another reduction to equalize in another section and you might not be able to prove prejudice and we would be no better off than we were before.

Q. If you are not affected, why should you be no better off than you were before?

A. Are you meaning to imply there that immediately after the Maritime Freight Rates Act was put into effect, that all rates were reduced to say the Toronto market and caused a difficulty involved in prejudice, you say in judging prejudice that that situation should obtain?

Q. I am just asking you why you should be any better off if you are not prejudiced?

A. Well, I think there are some angles there, Mr. O'Donnell, I am afraid we are arguing it.

THE CHAIRMAN: I am just wondering what the procedure ought to be. Here you have a certain rate structure and then you discover one day the reduction made on commodities that you are interested in in some other part of the country. Well, do you say that that by itself will be also putting a prejudice to you that you should not have to prove anything else but the bare fact that there has been a reduction made in the rate structure?

A. That is our argument in the Supreme Court case.

Q. Therefore, every time a rate is reduced in some other area, it must likewise be reduced in the

Maritime Provinces?

A. That is right, sir.

COMMISSIONER INNIS: I was just wondering about the attitude towards rates as expressed in the west. I think, in the case of Alberta, Mr. Frawley, the protest against the lowering of rates in Central Canada compared to truck competition -- is there any way of reconciling,--that is to say you are arguing for the lowering of rates as a result of truck competition. As I understand it, in many cases in western Canada they are arguing against lowering of rates. Is there any way of arriving at a compromise between the two positions?

A. I don't know if this will answer your point. It is my view that competitive rates where they contribute something over and above the out-of-pocket costs, are to the benefit of all traffic throughout the country.

Q. You have not discussed this with the western people?

A. No, I have not, but that is my view on that particular point.

MR. O'DONNELL: ... My point, my lord, in the potato case is Mr. Matheson agrees concerning these rates that the Maritime shippers suggested that it was merely necessary for the applicants to produce these competitive tariffs showing the reduction in rates in Ontario and Quebec to establish their contention and the Chief Commissioner said, "In my opinion, it is necessary to go further than this and prove some actual probable destruction of Maritime trade, or some prejudicial effect thereupon, either heretofore sustained or likely to ensue as a result of these competitive tariffs."

THE CHAIRMAN: Well, that is the construction of the Act as it is now?

MR O'DONNELL: Yes.

THE CHAIRMAN: Well, Mr. Matheson I understand would have the Act changed, and say, "By the very fact that you have had a reduction elsewhere, because of competition or for some other reason, you must at the same time grant a similar reduction in the Maritime Provinces."

Q. Isn't that right?

A. That is the general purport.

MR O'DONNELL: Q. Whether it prejudices you or not.?

THE CHAIRMAN: As a matter of draftsmanship, that is very simple.

MR O'DONNELL: Q. Whether it prejudices your shippers or not?

A. Yes. You take, for example---

Q. Is that correct?

A. That is right. You take, for example, there might be a reduction from X to Y to equalize with the Maritime Freight Rates Act, and it might not prejudice, because probably we might not be shipping there at that particular time, but we might be shipping there in the future.

Q. Then if they are, and you can establish prejudice, either actual or potential, you are protected, and what more protection do you need then?

A. Well, I think in relation to the other commodities other than competitive rates, we get that protection to-day, without indicating prejudice.

Q. You made no appeal or have taken no case to the Transportation Commission or to the Supreme Court since the potato case asking for or complaining of any prejudice in competitive rates?

A. No, because of this reason, Mr. O'Donnell, that---

Q. I am not interested in the reason.

A. In the long-run viewpoint we found we would not be

getting anywhere, and then of course---

Q. Not unless you could prove you were affected?

A. You see, the war intervened, Mr. O'Donnell, and with the intervention of war, and then in 1946 this particular case came up, and we have been occupied ever since. I have one case in mind, incidentally, that has been held in abeyance.

Q. Now, you say, Mr. Matheson, that circumstances have altered since the Duncan Commission, so that a review of the Maritime Freight Rates Act would now be in order, and, as I gather from what you say, that change has come about by reason of truck competition in other parts of the country?

A. That is right; and by means of a method of increasing rates horizontally.

Q. Now, what have you in the way of evidence in support of that suggestion which warrants your asking for a review of the matter at the present time?

A. A review of the---

Q. Maritime Freight Rates Act.

A. You are asking me if I had specific cases of the effects of the--

Q. Yes.

A. You are speaking of competitive rates now?

Q. Yes, all right, competitive rates; that is what we are talking about.

A. Well, referring to pick-up and delivery service, Mr. O'Donnell---

Q. I think you referred to a table the other day, did you not, an appendix in volume 2 of your brief?

A. Are you referring to the pick-up and delivery?

Q. No; I am asking you what you refer to, what evidence you suggest exists to warrant your asking for a change in the Maritime Freight Rates Act at the present time?

A. Well, I just don't know what particular point you are referring to. If you want to refer to the whole competitive rate aspect of our studies, that is found from Appendix No.21 to Appendix---

Q. And I thought you mentioned Appendix 49 the other day?

A. 55. I do not remember specifically; I might have.

Q. Well, at page 65 of your brief, about the middle of the page, you say;

"From additional studies of competitive rates in the Central Provinces and the Maritimes there emerge these findings:"

and you refer to Exhibit 48 in volume 2 of your submission.

A. That is right.

Q. Now, in Exhibit 48 you set out a whole array of rate data there?

A. That is right.

Q. And, as I understand it, it is compiled upon certain assumptions?

A. What are the assumptions, sir?

Q. Well, you have a heading there, "Assuming Normal Rates were increased 15%", for instance ?

A. Yes. Well, this was prepared, Mr. O'Donnell, you must realize this was prepared---

Q. Much before?

A. The time of the application. Not that we were committing ourselves that the rates should be increased by 15%.

Q. So that the rates set out in page 48 in that respect are not factual; they were based on those assumptions?

A. They have changed over. I think I qualified that at the hearing, and you must remember that since this brief was presented, October 11th, 8% increase has been added.

Q. And the same thing applies to Appendix 48, likewise

based on assumptions which are not factually correct?

A. Assumptions which changing events have not proved out, or adjusted by other increases. As you can appreciate, it would be a tremendous job to bring this all up to date right now.

Q. Again, at page 65 you have footnote 108, referring to Appendix 49. Will you please turn to Appendix 49, in volume 2; have you got that?

A. That is right.

Q. Will you please tell the Commission where you find, for instance, the first group there, Ale, Beer and Porter -- where you find the 32-cent rate which is set out under the heading in the last column, "Rate Sept. 15, 1948"? What tariff do you get that in?

(Page 7420 follows)

A. That might be a class rate. It is quite difficult for me to pick out rates---

Q. Under my instructions, Mr. Matheson, the last figure under each commodity that you have given is wrong; for instance, the 32 cents is wrong, and in the case of Agricultural Implements and Parts the 41 cents is wrong, the Apples in No.3, the 41 cents is wrong, in Boots and Shoes, No.4, the 75 cents is wrong, and so on right through the whole exhibit.

A. These rates, incidentally, Mr. O'Donnell, were checked by the Canadian National Railways.

Q. As to that, I don't know anything about it, other than my instructions.

A. In Moncton. If they are wrong, it is one of those things. I will have to re-check them again to see, to bring them up to date.

MR COVERT: Mr. Chairman, I was going to suggest that if it is just left this way it does not do us much good. I think perhaps Mr. O'Donnell has the correct information.

MR O'DONNELL: My instructions, Mr. Chairman, are that the correct information is set out in the second column and not in the third column as shown there; what is shown in the third column is wrong. Those are the instructions that I have.

THE CHAIRMAN: Well, they ought easily to be put right.

THE WITNESS: Yes. What is right there? You say the first column and the second column are right but the third is wrong?

MR O'DONNELL: They are incorrect.

THE WITNESS: Mr. O'Donnell, the answer is, it was

an assumption there in connection with the 15% increase.

MR O'DONNELL: Well, there is no indication of any assumption, and in any event it is not factually correct, on my instructions.

THE WITNESS: Well, it can be easily corrected; but I do not think it destroys the purport of the general picture.

MR O'DONNELL: Q. I don't know; I understand it does. Apart from those tables that are not factually correct, and which you have put forward as being indicative of the existence of truck competition in other parts of the country, have you any other information that warrants your saying that the Maritime Freight Rates Act should be revised at this time on account of such truck competition?

A. You mean in addition to all these exhibits?

Q. Yes.

A. I have nothing further, excepting that I did not -- it was quite a voluminous task to dig into this, Mr. O'Donnell.

Q. I understand that.

A. I want to point out, of course, that all the rates that are included here on which traffic moves are not ahere. For example, there are the truck rates and there are the water rates. These are only the competitive rates that the railways have published, or some of the competitive rates the railways have published.

Q. Now, at page 64 of your brief, about the second paragraph from the end, you say:

" . . . the number of competitive reductions has been considerably less in the Maritimes, attributable in part to the limited quantu of attractive package traffic and in part to the lower rates under the Maritime Freight Rates Act ."

I gather from that that there is less need or there would be less occasion for reductions in the Maritimes owing to the low rates prevailing other than the Maritime Freight Rates Act, in the first instance; correct?

A. Yes. The motor trucks have considerable difficulty, I imagine, in relation to the rail rates, to meet the competition.

Q. The rail rates are so low that the motor trucks in the Maritimes have very great difficulty in meeting them; and, secondly, I gather that there are a lesser number of commodities, individual commodities, carried in the Maritimes as compared with those which are carried in central Canada, for instance?

A. I will put it this way; I will answer it this way: There are less manufactured goods in the Maritime Provinces than there are in the central provinces.

Q. But, notwithstanding that, is it not a fact that a higher percentage of the revenues resulting from railway transportation in the Maritime Provinces -- that is, in the Atlantic region of the Canadian National Railways, in any event -- results from competitive traffic revenue than is the case in any other region of the Canadian National Railways?

A. You say that most of the traffic in the Maritime Provinces, most of the revenue that accrues in the Maritime Provinces, is predicated on competitive rates?

Q. No, I do not say that; I say a greater proportion of the revenue, freight revenue, in the Atlantic region accrues from competitive traffic than that in any other region of the Canadian National; do you know what your position is in that respect?

A. I wouldn't know; you would have those figures. But that is quite a different thing. It has been only a guess.

I am glad to know that you have developed your information as to the traffic figures on that scale.

MR O'DONNELL: My figures are, Mr. Chairman, that in so far as the Atlantic region of the Canadian National Railways is concerned, exclusive of grain and grain products and transcontinental traffic, a comparison of the competitive traffic revenue with the regional freight revenue would show -- these are the figures for 1940 -- that 11% of the regional freight revenue in the Atlantic region is competitive traffic revenue, whereas---

THE CHAIRMAN: Why do you go back to 1940?

MR O'DONNELL: Because, my lord, during the war-time the rates were frozen.

THE CHAIRMAN: But there is nothing since the war?

MR O'DONNELL: No, not since the war. The rates were frozen. Study had been made for a number of years until 1940, and then during the wartime period the rates were frozen, and since then no other figures are available than the 1940 figures. Whereas in the central region, my lord and members of the Commission, the percentage of competitive traffic revenue as compared to the regional freight revenue is 10.1, in the western region it is 2.1, and on the system as a whole it is 7.5; so that on the figures that I am instructed have been compiled it would show that in the Atlantic region a greater percentage of the freight revenue accrues from competitive traffic than in any other section on the railway.

THE WITNESS: Does that change your figure, Mr. O'Donnell, from the estimate of Mr. Knowles of 19% of the revenue for all Canada obtained from competitive rates?

MR O'DONNELL: That is a different compilation.

MR EVANS: It was not 19%.

MR O'DONNELL: 16%.

THE WITNESS: You see, as I remember the compilation, Mr. Evans, the 19%, when they took into consideration the international traffic it came down to 16%, but when you segregated the international from the total it was roughly about 19%, it was higher, so ---

MR O'DONNELL: Q. What I am interested in, Mr. Matheson, is the statement you make at page 64, that the number of competitive reductions has been considerably less in the Maritimes, and I say that figures show that proportionately you had more.

A. Would that include export and import rates as well?

Q. No; I said it is exclusive of grain and grain products and transcontinental traffic.

A. But exclusive of import competitive rates?

Q. I don't know.

A. I would like to see those figures and the basis for the figures, because I question them.

Q. I am instructed that it does not include the export and import rates.

A. Would I suggest that that be---

Q. All I am asking you, Mr. Matheson, is if you have any additional information to support the statement that you make at page 64, that the number of competitive reductions has been considerably less in the Maritimes?

A. That is, in the number; but, you see, the competitive reductions---

Q. Well, have you anything else other than what you have mentioned, these various appendices we went over which were not factually correct, for instance?

A. Beg pardon?

Q. Have you any other information in support of that statement than the various appendices, 47, 48 and 49,

which are not based on---

MR. F. D. SMITH: I do not want to interrupt, my lord---

MR O'DONNELL: Which are based on assumptions for the most part.

MR. F. D. SMITH: I do not think it is fair to say they are not factually correct. They are correct on the assumption that the increase would be 15%. There is nothing to show that any of Mr. Matheson's figures are wrong, if the assumption that there would be a 15% increase is made.

MR O'DONNELL: That may be, but, on the other hand, it certainly is not factually correct, because the situation is not as set out.

MR COVERT: Mr. Chairman, It seems to me, with all respect, that we are quibbling as to what you call a thing. There is no point, if I may so suggest, in saying that the whole statement is not factually correct. As I understand it, they are agreed that the exhibits are factually correct except as to one column, and, as I understand Mr. Matheson, he says that that one is based on an assumption. I do not think we should waste time here on saying whether they are factually correct.

MR O'DONNELL: I quite agree with that; but if the assumption is incorrect, then the compilation as set out in the exhibit is incorrect.

MR. F. D. SMITH: "The assumption is incorrect" -- I cannot quite understand that language. Since then there has been an 8% instead of 15%.

MR O'DONNELL: And that throws the whole compilation out; that is my point.

THE WITNESS: You see, with the change in the freight rate structures---

THE CHAIRMAN: Q. Mr. Matheson, is not this the posi-

tion, that you tell us that it is unfair that you should be compelled, when you have a case under the Maritime Freight Rates Act, to show actual prejudice, because it is very hard to establish actual prejudice? Is that right?

A. That is right, sir.

Q. And therefore there should be a substitution made and another procedure followed; but are you not attempting in these figures to show that there is actual prejudice, the thing that you say is so very hard to establish?

A. What I am doing here---

Q. Isn't that right, sir?

A. I am saying here that these reductions were made, that these competitive reductions were made on a large number of commodities.

Q. Are you not trying to show that that prejudiced you, then?

A. Not as regards a rate between X and Y. I might in some of these cases show where they have reduced the rate by 20 or 30% and we have not got a corresponding reduction because we have not got the same competition, and we are saying that it is quite difficult for us to indicate prejudice, but there is what happened. They reduced those rates.

Q. That is, you say there has been a reduction elsewhere?

A. That is right.

Q. Therefore we should get it at home; isn't that it?

A. On the proportion of our rates coming up here.

THE CHAIRMAN: You see, Mr. O'Donnell, it seems to me if we take Mr. Matheson's position as he has given it to me on several occasions it greatly simplifies the whole case; I do not say it makes it any easier, but it simplifies it. He says that, leaving prejudice aside for the time being,

the railways grant a lower rate, and every time they reduce a rate on the commodity in which the Maritime Provinces are interested, namely, potatoes for the time being, a similar reduction should be made on the haul from the Maritime Provinces to the central Canadian market.

Q. Isn't that right?

A. That is right.

Q. Without having to show any prejudice. That is one part of the case. Therefore there is no use in going into a terrific mass of figures to show whether or not in any particular case or between any two particular points there is prejudice. Secondly, he says that the Act should be further extended in this way, that even if there is no railway reduction in the case at all, if the railways abandon the attempt to compete with the trucks in bringing potatoes to the central market, nevertheless there should be a lower freight rate on the railways granted in the Maritimes so as to compete with the trucking of that same commodity to the central market by the potato growers of Quebec and Ontario. That is right, isn't it?

A. That is right.

THE CHAIRMAN: Now, those are the two things he wants, and he is going to submit to us a draft of his proposed amendment. Now, it seems to me if we confine the case to those two things, which in themselves are of radical importance, we will be proceeding, I think, more

clearly. Take that second case, you see, the second point that I put there; it creates this new situation, that is to say, you may have potatoes carried in central Canada wholly by truck; the railways may decide that they cannot put in force a competitive rate which would meet the requirements of such a rate, that is to say, which would be no lower than was necessary to meet the competition, and at

the same time would reimburse out-of-pocket expenses and provide a margin of profit, greater or less, but some contribution to the overhead expenses. Now, if the railways make up their minds that they cannot do that, and they are going to abandon the hauling of that commodity, so that the trucks take it all, then according to Mr. Matheson the Maritime Act should be amended so that the railways in the Maritimes should grant a rate which would compete with the truck rate in the central part of the country. Now, I think those are the two proposals he has to make, and if we address our questions and our evidence to those two points I think we would be making better progress, instead of going all over the country to see what rates---

MR O'DONNELL: The trouble, my lord, is that the brief is very extensive, and there are a whole array of statements which one is inclined to follow or explore without any real benefit in the end.

THE CHAIRMAN: You see, in the first place the Maritime Freight Rates Act was conceived with the view wholly to railways.

MR O'DONNELL: That is right.

THE CHAIRMAN: Not to any other mode of transportation.

MR O'DONNELL: Well, I quite agree, my lord, that possibly---

THE CHAIRMAN: I would be very thankful so far as I am concerned for anything that you might---

MR O'DONNELL: I was merely trying to find what evidence there was in support of the suggestion; I was merely asking Mr. Matheson what evidence he had in support of these various suggestions, that these competitive rate reductions in the central provinces had increased the rate -- disadvantages, as he puts it -- of the Maritime

industries, and the central markets of Quebec and Ontario. He sets that out at 66.

THE CHAIRMAN: His answer to that is, you have made the reduction, and therefore---

MR O'DONNELL: Well, that is what he says.

THE CHAIRMAN: The courts have held that so far he has to show not only that there has been a reduction, but that the reduction created a prejudice. He wants that idea of prejudice removed.

MR O'DONNELL: Q. And its removal would, Mr. Matheson, amount virtually ~~to~~ automatically to a subsidy, or a further subsidy, in any case where the competitive rate had been put in in the other provinces?

A. Yes, that is right.

Q. Now, at page 52 of your brief you make reference to the machinery for the publication of rates, and so on. Do you consider the provisions of the Railway Act and the Transport Act concerning the filing and approval of rates as they stand at the present time to be satisfactory?

A. In my own experience, Mr. O'Donnell, I find it very satisfactory. The main thing involved there is competitive rates. One thing I do think, however, is that competitive rates should be subject to greater review than at present, somewhat on the same line as fourth section relief or review in the United States; but by saying that I do not mean that the railways should be handicapped in not publishing a rate on short notice.

Q. That is what I had in mind. When we were in British Columbia I think the suggestion was made to the Commissioners that every change in competitive rates at least would have to be approved prior to coming into force, and my suggestion was that that would virtually be impracticable and would impede the railways in the handling

of their everyday business and in facilitating shipments of the shippers?

A. I would not want to say that, because I have had cases myself where if it was held up for two or three weeks it would be just disastrous for the railways so far as getting the traffic was concerned.

THE CHAIRMAN: There is this other matter that might be considered, Mr. O'Donnell: If the Act remains as it is, and there is no change, then I think Mr. Matheson contends that when the Board is called upon to deal with the rate which is said to be discriminatory as against the Maritime Provinces, the Board should have the power not only to disallow the rate but to fix a new one instead.

THE WITNESS: That is right.

MR O'DONNELL: Yes, I understand that suggestion with respect to that other point.

Q. And on that point, possibly, Mr. Matheson, suppose the railway did not want to meet the competition, how would the subsidy be computed in that case?

A. On the basis of a subsidy?

Q. Yes.

A. I think there is the matter there of working out -- there are some mechanics here, Mr. O'Donnell, and perhaps it is a question of regulations rather than the law itself. I would suggest, of course, that there could be a determination as to what the normal rate would be otherwise, and adjustments made on that basis. I am keeping in mind there, you see, that the Canadian Pacific Railway is operating in that territory, and the Duncan Commission itself found that there should be some recompense of that operation, and other railways also, in the event of any adjustments that are in line with the Intercolonial policy.

Q. And there would be some mechanics also in the case

where it might want to meet the competition; there would have to be a computation of subsidy in that case also, on your theory?

Q. Beg pardon?

Q. I say there would have to be a computation made as to the subsidy to which the railway would be entitled in the case where it might want to meet the competition?

A. Oh, definitely.

Q. How would that be computed? Is that again a matter to be discussed?

A. You see, the Maritime Freight Rates Act did not lay down altogether the procedure and the intricacies in minute detail as to how this is done in connection with reimbursement under the Maritime Freight Rates Act. That is being done by the Board of Transport Commissioners on the submissions each month and adjustments made, so I take it the same procedure or regulations would be set out for that.

Q. At page 74, Mr. Matheson, you speak -- I think Mr. Sinclair covered this question, but I am not quite sure -- concerning the arbitraries. An arbitrary is merely part of a rate, is it not, in the final analysis?

A. It is part of a joint through rate.

Q. And there is nothing in the Maritime Freight Rates Act that prevents the increase of the rate or any part of the rate if the circumstances prevailing under section (3(2)() or section 3(2)(c) exist?

A. The whole arbitrary structure of the Maritime Provinces has been one of concern and representation for years.

Q. But there is nothing in the Maritime Freight Rates Act that prevents the increase of arbitraries?

A. Not in specific reference to arbitraries, but we are very much interested in our arbitraries, and there have

been quite a few decisions where the Board of Transport Commissioners have discussed it. I am not going into the detail of it, but I would refer to the following cases---

Q. I only asked you, Mr. Matheson---

A. Yes, but I think it is apropos to this answer:
6 J. O. R. & R. 133; 12 J. O. R. & R. 61; 22 C. R. C. 398;
and 29 C. R. C. 238 at 250.

Q. I still ask you, and I think you agree -- there is nothing in the Maritime Freight Rates Act which prevents the increase in the arbitrary as part of the rate?

A. There is nothing specific in that, Mr. O'Donnell, but we are asking for it to be specific.

Q. The table you set out at the top of page 90 of your brief, Mr. Matheson, I am instructed that the mileages in certain of those cases are wrong, and that therefore put a different complexion on the comparability of the rates. For instance, the mileage Halifax to New York, instead of being 954.1 as set out, I am instructed, is 776.

A. What is that mileage again?

Q. Halifax to New York, instead of being 954, is 776.

A. 776?

THE CHAIRMAN: It should be 954 instead of 776?

MR O'DONNELL: It is 954, and I am instructed it should be 776.

THE CHAIRMAN: It is the other way round.

MR O'DONNELL: Yes, my lord.

Q. And Bethany, Ontario, to New York, instead of being 952, is 588.

A. Bethany, Ontario, is what instead of 952?

Q. 588.

A. I am glad you brought that up, Mr. O'Donnell, because we had---

Q. There may be some explanation of the difference.

A. We had these rates checked, you see, and as a matter of fact there was an exchange of wires between your office in Montreal and Moncton, and we made some corrections on our own basis.

Q. It may depend upon what you consider the shortest route mileage; I suppose that may be where the difference is.

A. What we were trying to get was the short line mileage. Would these be Canadian National mileages? That 776 looks to me to be the short line mileage.

MR O'DONNELL: I would suggest, my lord, that for the purpose of saving time, we can have that checked.

THE WITNESS: Yes, I would like to have it checked.

THE CHAIRMAN: Then we will adjourn, Mr. O'Donnell.

---At 12:55 p.m. the Commission adjourned until 2:30 p.m.

(Page 7435 follows)

AFTERNOON SESSION

Monday, November 7, 1949.

THE WITNESS: There was a question put to me this morning, Mr. Chairman. It was very brief. It was: If I knew of any occasion where arbitraries were fixed in relation to rate changes.

I said I did not remember, at the time. But at the noon hour I checked up, and I found one case I want to refer to.

It is order No. 72905 of the Board of Transport Commissioners, and it is dated August 12, 1946.

It is in reference to international rates, in connection with the rates on newsprint, and the Board stated:

"Rates on newsprint paper from Canadian basic groups be fixed as herein stated to arbitraries from points taking arbitrary differentials over the basic groups as set forth in Order No. 50913, dated the 5th of April, 1934."

That is, the newsprint case -- that they shall not be increased under the order.

MR. SINCLAIR: Q. That was an international rate case, where the local Canadian rate could not be increased. That was a very different case to the one I put to you this morning.

A. This is an instance where the arbitrary has not been changed, but has been maintained since 1934, despite general percentage increases in the international rates.

Q. Am I correct in saying that that is an international rate case, and that all they said was that the Canadian could not be increased?

A. The Canadian factor could not be increased.

In other words, that is a specific illustration of an arbitrary that has not been changed.

THE CHAIRMAN: Is there a judgment by the Board?

MR. SINCLAIR: No doubt there is, Mr. Chairman. But I say that the facts, as given by Mr. Matheson, clearly show that to be completely irrelevant to my point this morning, that is, of an arbitrary part of the through rate being maintained, fixed, irrespective of the other factors in the rate being increased. That is an international rate case, and I submit it has no application to the point I was dealing with this morning.

THE CHAIRMAN: Perhaps we had better see it.

THE WITNESS: This is an order of the Board of Transport Commissioners, Order No. 72905, and it is dated August 12, 1949. And I might say that the rate was from Bathurst to a point in the United States, as a joint through rate, consisting of an arbitrary based, if I remember correctly, on Grand Mere, Quebec; and that arbitrary has never been changed since 1934.

MR. SINCLAIR: Q. Once again I would submit that this is an international rate case, and is entirely dissimilar to the point I made.

A. That is the only exception I know of, of the international rates, where they have not increased their arbitraries. In all other instances, they have.

THE CHAIRMAN: Q. You say it is the only one in which they have not?

A. That is right, at least, on these international rates.

Q. On other occasions, were the arbitraries increased?

A. Yes, Mr. Chairman. I would say that where there might be some relationship between other shipping points, if on an arbitrary or differential basis, this is the only exception that has been made, except if you go into the case of Port differentials.

MR. SINCLAIR: Q. Which are not arbitraries, at all.

A. The line of demarcation between what is a differential and what is an arbitrary is quite controversial. The same definition might be applied to both. I think that is a matter for argument, this other feature, Mr. Chairman.

THE CHAIRMAN: Q. What you say about arbitraries, or what you submit is: that they ought never to be changed -- never be increased, I mean?

A. Never be increased, except with the approval of the Board of Transport Commissioners.

MR. O'DONNELL: Q. And the answer you gave was that, under the Maritime Freight Rates Act, there is nothing to prevent an increase in arbitraries?

A. As the Maritime Freight Rates Act is now constituted, there is nothing to prevent that, as I interpret it.

Q. There are a considerable number of other points which are mentioned in the brief, and I would be inclined to take some time to go over them. But it might shorten matters if we brought our own evidence concerning those points. So, in the circumstances, I think I shall not ask Mr. Matheson certain questions which, otherwise, I would. But I would not wish it to be supposed that, because I did not ask him, or cross-examine him on certain points, that I necessarily agreed with him. But, at page 103 of your brief --

THE CHAIRMAN: Of the first volume?

MR. O'DONNELL: Yes, Mr. Chairmen, page 103. And I would like to ask Mr. Matheson one question about that.

Q. In the second paragraph, you say:

"While this whole matter of alternative routings appears to be one for an investigation directed to (a) a balanced arrangement in the interest of both the railway and shippers, and (b) the practicability of universal inter-change in Canada, it is, however, specifically recommended that such changes that are necessary in the Maritime Freight Rates Act be effected to restore the alternative routing privileges that previously existed via Saint John, N.B."

What do you mean, or what had you in mind by the practicability of universal inter-change in Canada? Did you mean that the originating carrier should have the longer haul to the inter-changing points closest to destination?

A. That is the generally accepted principle in rate-making, that the originating carrier would have the benefit of the long haul. But then, in connection with this angle about alternative routings via Saint John, that is another feature which was, really, in existence before; and the Supreme Court of Canada overruled the Board of Transport Commissioners on it.

Q. That matter was gone into?

A. That matter was gone into, and it is a question of interpretation.

Q. That is the judgment in 34 S.C.R., page 223, I believe?

THE CHAIRMAN: What was the effect of that judgment?

MR. O'DONNELL: Well, the alternative routings which had previously existed were not ordered to be restored via Saint John.

THE CHAIRMAN: Were not what?

MR. O'DONNELL: Were not restored via Saint John.

THE WITNESS: If you remember, the interpretation of the Supreme Court was to the effect that where the Maritime Freight Rates Act was compulsory on the Canadian National, and only voluntary, in respect of the Canadian Pacific Railway, or permissive in connection with the Canadian Pacific Railway, the Board could not force the Canadian Pacific or the Canadian National to participate in a joint rate within the Maritime area, via the Saint John routing.

MR. SINCLAIR: Q. But the Canadian Pacific was willing to maintain the Saint John gateway?

A. Definitely. That is right.

THE CHAIRMAN: If you are through with Mr. Matheson, Mr. O'Donnell, let me say that following up a case you are making for the Maritime Provinces, as I understand it, I suppose it would be a natural outcome of that, that the rates made, or which have been ordered fixed from time to time to give you relief in the Maritimes, ought to be fixed by the Board of Transport Commissioners?

THE WITNESS: Definitely, sir.

THE CHAIRMAN: Q. That would free you from all talk of discrimination?

A. That is right. There might be some cases which do exist now, where there is no conflict with the

Railway Act.

Q. You refer to one or two cases decided against you. One was that you would have to show actual prejudice yourselves?

A. That is right.

Q. And that in any case all the Board could do would be to disallow certain rates, and that the Board could /not fix a rate instead, you say from now on, rates should be fixed, in such cases, by the Board?

A. That is right.

Q. If so, if such a rate would otherwise be discriminatory, the Board fixed it?

MR. SMITH: I find that Mr. Brazier wants to ask a question.

CROSS-EXAMINATION BY MR. BRAZIER:

Q. Mr. Matheson, I refer you to the evidence which you gave in Volume 36, page 6903, when you were cross-examined by Mr. Sinclair. Have you that evidence there?

A. That is right.

Q. And I refer you specifically to the answer you gave just below the middle of the page, which starts:

"A. Well, this might be a long reply. . . ."

A. That is right.

Q. Would you refresh your memory now by looking that over?

A. Yes.

Q. In the first place, would you tell me what you refer to, when you mention cost of service, in the second line of that answer, when you say:

". . . Frankly, I think predicating freight rates on cost of service is impracticable --

that is, predicated on just cost of service alone.
..."

What kind of cost did you have in mind at that time? You will see, later, you refer to out-of-pocket costs?

A. The minimum cost of service.

Q. Would that correspond to out-of-pocket expenses?

A. That, in some instances, could include so-called expenses that would not be incurred if the traffic did not move.

Q. Now, if you consider the matter to include the cost, to include the all-inclusive costs, that is, your out-of-pocket, plus your rents, taxes, and profits, would you still have the same opinion, that it is impracticable?

A. I would still have the same opinion.

Q. Now, what are your reasons for saying it is impracticable?

A. When you are dealing with the fabrication of freight rates, you are dealing with a wealth of commodities, some commodities being of very low value but high in bulk, bulky commodities which, if they were assessed on the so-called average cost of service, would only move within a very short distance.

Now, the fact that that traffic would not move, would have the effect -- that is, where it would not move, and contribute to the over-all cost, to the general overhead, -it would have the effect of increasing all-inclusive cost of service.

The railroads then would require additional revenue, or increased rates, in order to compensate them for the difference.

(Page 7445 follows)

MR. BRAZIER: Q. Can you give me any example of such commodities which are today moving?

A. Coal, for example, and I will just refer you to the ex-parte case 168, in the ex-parte case 168 final decision.

Q. This is the Interstate Commerce Commission?

A. Yes, Interstate Commerce Commission, and incidentally the Interstate Commerce Commission have made some very exhaustive examinations into the case. They have made many studies in connection with the movement of coal and movement of automobiles which is a relatively high value commodity. In this recent decision were set out figures on the mimeographed page 58 of that particular decision -- various cost factors dealing with the products of mines vis-a-vis all traffic routes and I think it would be appropriate for me just to read from page 59 of the mimeographed copy of that decision:

"It will be noted that products of mines compare favourably with all carload traffic except as to ton-mile revenue and weight unit distribution of the overhead burden. Thus, if we add the weight unit distribution of the overhead burden, namely, \$855,000,000, to the out-of-pocket cost, namely, \$1,420 millions, we arrive at a 'fully distributed cost' of \$2,275 millions, which exceeds the revenue, \$1,873 millions, by \$402 millions, the revenue being only 80 per cent of such cost. Based on petitioners' estimated expenses and revenues for 1949, the revenues for the principal products of mines would be less than 100 per cent of such 'fully distributed costs', as follows: iron ore, 52 per cent; bituminous coal, 70 per cent; coke, 74 per cent; nonferrous ores, 76 per cent; and

anthracite coal, 91 per cent. Petitioners and producers of certain other commodities therefore contend that these products of mines will not bear their fair share of the overhead burden unless they are increased percentagewise in this proceeding at least to the same extent as commodities generally."

The competition of out-of-pocket costs on operational expenditures and the distribution of the overhead burden of a weight unit basis give inadequate consideration to the relatively low comparison and favourable transportation characteristics of these commodities. Would they find in that case that the coal would not move if it bore its full share?

A. That is right, sir.

Q. They actually made that finding, did they?

A. Yes, that is the finding in this particular case.

Q. Would you agree with me, Mr. Matheson, if I said that the practicability of using the cost of service basis increases as the percentage of the value of the available costs increase?

A. Not necessarily, Mr. Brazier. I think one of the most outstanding cost studies in that regard has been made by Mr. Floyd Eldridge of the Interstate Commerce Commission with which I have had several discussions and exchange of correspondence and in the report of the Senate Committee Document 63 he goes into this whole cost picture in connection with Interstate Commerce Commission case 28-300, and I think I should refer to page 78. I won't read it, and 79 of that particular Senate document, which goes into the question of the distribution of the constant cost basis on

considerations of ability to pay.

Q. Let me put it this way, Mr. Matheson. If the comparable costs amounted to 100 per cent of the all-inclusive costs, then would you agree that the fairest and most practical way of fixing freight rates is by using the cost of service as a basis of those rates?

A. That is an assumption which I do not think will ever eventuate.

Q. No, but in that case you did agree with the theory?

A. I would have to give some thought to the ramifications of it, but I think it is an impracticable situation.

Q. The studies that have been made over the past ten years tend to show that a much greater percentage of the costs are available with traffic than was the case ten or fifteen years ago. Isn't that correct?

A. It is absolutely correct in this sense, that as the density of the traffic over the line becomes nearer to the maximum or the capacity of the particular line in the long term, and that has to be differentiated in the long term point of view, the comparable expenses tend to increase, but I will say definitely and categorically that it will never be 100 per cent.

Q. I think the most recent study of the Interstate Commerce Commission shows that they come to the conclusion of 80 to 90 per cent?

A. 80 to 90 per cent, I think, was the last study which was contained in Interstate Commerce Commission statement No. 2/48 dated October 1948. That is the latest one I have, but incidentally on that particular point I will refer you also to page 52 of the Senate document No. 63 and the last paragraph. When discussing this

question of the short-term vis-a-vis the long-term:

"There are occasions, however, where the short-term view is applicable as, for example, in those situations where the railroad reduces its rates to competition basis to attract additional traffic on a branch line the revenue from which are insufficient to maintain property. Such out-of-pocket costs may exclude such amounts of the charges for maintenance-of-way as well as an allowance for the return of value. Such reduced rates are, of course, economically justifiable only up until such time as the property 'falls apart' --" etc.

So there is a short-term aspect there which perhaps is of importance.

Q. You, I think, said that as the capacity of the railway becomes fully utilized, then the tariff costs tend to become concretely part of the all-inclusive part?

A. That is generally accepted now.

Q. Is it your experience in many cases that Canadian railways today are being used fairly well to capacity?

A. In the last few years --

Q. In the last few years?

A. I think the railways in Canada never realized their capacity and the splendid job they did in the war was a mark of high commendation to them. As to whether all the railways are reaching their capacity or not, I doubt very much if that is the case on some branch lines.

Q. I am speaking of the general over-all system?

A. Well, I think perhaps, Mr. Brazier, there may be a difference there. You have got to appraise your conditions and circumstances in Canada in relation to

the United States or practical facilities and all these other factors. In some cases perhaps you are just going to your hitting capacity, but in other cases you might not be. You take in 1938 one of the big cases was in connection with the development of facilities and all this sort of thing and we had in Canada undoubtedly a tremendous amount of railroads on a per capita basis. You have got to consider all those circumstances, Mr. Brazier.

Q. Mr. Matheson, are you familiar with the Professor Healey work on the Economics of Transportation in America?

A. I have read some excerpts from Professor Healey's study, and incidentally Mr. Healey's study is referred to in document 63. There are a number of studies in that record.

Q. You would disagree with Professor Healey when he advocates the cost of service as a basis for rates?

A. I would absolutely disagree with Professor Healey if he advocated cost of service as the basis for fixing freight rates in Canada.

MR. EVANS: Perhaps my friend should let us know where Professor Healey advocates the adoption of the cost of service principle because I don't know where it is.

THE CHAIRMAN: Then I will add to that, secondly,-- is there any case where that principle was adopted and put into practice?

MR. BRAZIER: Not to my knowledge.

THE CHAIRMAN: Has Professor Healey, or does he recommend it?

MR. BRAZIER: Substantially so.

THE CHAIRMAN: There are some quotations in your own brief, are there not?

MR. BRAZIER: Oh yes, subject to certain qualifications. Just one last question, Mr. Matheson. I presume you, being particularly interested in railway problems from the point of view of the Maritimes, that you would feel the adoption of such a principle might operate against the interests of the Maritimes?

A. My answer to that is that the Intercolonial Railway was not constructed as a paying proposition predicated on cost of service.

Q. But you can still be reimbursed by way of subsidy or for disadvantage that you claim?

A. Apparently you are not conversant, Mr. Brazier, with the finding of the Duncan Commission where they said that this long railroad and this line out of line haul and the costs in connection with snow and the long road and that sort of thing are factors which should not be borne by the railway or the traffic which passed over the line but by the Dominion Government as a matter of national policy.

Q. But if that principle was adopted in the rest of Canada, you could still be reimbursed by way of subsidy?

A. I cannot see this cost of service principle, Mr. Brazier. I have studied it and I think it would be bad for the whole of Canada and the railways and the persons and industries on the line.

Q. So you are not predicating your information principally from the fact that you are representing the point of view of the Maritimes?

A. No, within the four corners of the Railway Act, we still operate under the Railway act as well, and there

are cases that arise for example in connection with certain rates to the United States. Our potatoes would not move down to the United States if it was predicated on the cost of service and in some cases it was to the advantage of the railways to put in special rates, for example, in the case of turnips. They would not have got the traffic otherwise and if that was the advantage of the railways it was of advantage for them to carry it, and the Interstate Commerce Commission was very strict to see that the rates were not unduly high and were remunerative, that they made some contribution for the estimated fixed charges of the railway and that they were reasonably within the considerations of the Interstate Commerce Commission.

MR. FRAWLEY: Mr. Matheson, I would like to ask you a question or two about your right to question rate reductions in other parts of Canada.

MR. SINCLAIR: My lord, I thought that when we were in Halifax that my learned friend Mr. Frawley along with my learned friend Mr. Shepard and my learned friend Mr. MacPherson, had closed their cross-examination of Mr. Matheson. My notes say they had. I thought that they were finished with him and I think the only inference that can be drawn from the fact that those three gentlemen did not see fit to cross-examine Mr. Matheson on the estimate as to the deficiency in 1947 from the handling of grain, was that they were quite prepared to let it stand as it was. Surely my friend Mr. Frawley is not at this stage going to start another cross-examination because if so, I don't know where it will end. Possibly I would then ask your indulgence to let me start again, and then Mr. Frawley would then say he would like to start again.

THE CHAIRMAN: Of course you are using the term "cross-examination" as if this was a case in court. It is true that the provinces were given the first opportunity to examine witnesses ahead of the railways. That is why Mr. Frawley came into the picture before you did. Now Mr. Frawley may be intending to elicit some information that would be useful to us in our deliberations and whether he does or not you will have an opportunity of questioning Mr. Matheson further if you wish.

MR. SINCLAIR: That is fair enough, my lord, if it is to be that way.

CROSS EXAMINATION BY MR. FRAWLEY

MR. FRAWLEY: Do I understand, Mr. Matheson, of that you feel because your Maritime Freight Rates Act you have the right to question rate reductions in other parts of Canada?

A. Under the interpretation of the Supreme Court of Canada in the Interpretation case that is what I consider right.

Q. In the potato case?

A. No, the interpretation case.

Q. What is the citation for that case -- 41 C.R.C.?

A. 41 C.R.C. 56.

Q. So now then let us apply it to a concrete instance --

THE CHAIRMAN: That case was on what page?

MR. O'DONNELL: 41 C.R.C., page 56.

THE CHAIRMAN: What is the reference?

MR. FRAWLEY: 41 C.R.C., page 56. Now did the Supreme Court draw a distinction between competitive rates and class or commodity rates?

A. In the potato case the Supreme Court was only concerned with the questions that were put to it in relation to competitive rates.

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THE CHAIRMAN: Pardon me. You are asking Mr. Matheson what a certain case decided. Have you not the case yourself?

MR. FRAWLEY: I have not got it in front of me and I should not be asking him, sir, that kind of question anyway. I will abandon that because the case would have to be read.

THE CHAIRMAN: I thought perhaps you could read us the case?

MR. FRAWLEY: No, I haven't it with me. Now, Mr. Matheson, taking a case concretely, the Province of Prince Edward Island and the Province of New Brunswick export quantities of potatoes?

A. That is right.

Q. Principally to central Canada?

A. That is right.

Q. And as far as you know they do not export as far as Winnipeg?

A. There have been occasions, Mr. Frawley, where they have, but it is not a continuous market.

Q. Now, the growers of potatoes in southern Alberta thought that they should have a better rate into Winnipeg. I think potatoes came under 8th class and they thought that they should have a better rate. If those potato growers could induce the Canadian Pacific Railway, because they are on local Canadian Pacific points, if they could induce the Canadian Pacific to give them a better rate, in other words a special rate or a special commodity rate, would you feel that you had the right to question the reduction to those potato growers from the rate which they now have?

A. Well, in answer to that, Mr. Frawley, in actual practice it consists of a lot of my work and we are not

shipping to Winnipeg and not interested in a market to a large degree, only probably in a minor degree in nine chances out of ten we would not bother saying anything at all.

Q. But you do feel under this legislation you would have the right to object to that rate reduction?

A. We would have the right to ask for an equalization. Actually if I remember the facts, Mr. Frawley, we had special commodity rates lower than class rates into some of the western markets. We had included Winnipeg so I am a little hazy, but I know we had special rates into some of the points in western Canada on several occasions.

The rates came in and went out again and came in again. In answer to that, if for example you were granted a rate percentagewise in relation to the 8th class rate, we would not have any objection because you are getting exactly what we are getting in fabricating the commodity rate.

Q. If these growers in southern Alberta induce the Canadian Pacific to put them into 9th or 10th class or however they would work it out, or in plain language, a better rate, I do understand from you now that you would have the right whether you proceeded to exercise it or not?

A. Yes, we would have the right to come in and ask for a corresponding adjustment.

THE CHAIRMAN: You are speaking of a rate from Lethbridge to Winnipeg?

MR. FRAWLEY: Yes.

THE CHAIRMAN: Are you talking of a rate from Nova Scotia to Winnipeg?

A. Definitely, sir; that is the comparison, I think, Mr. Frawley.

MR FRAWLEY: Q. And then you say that if that came before the Board the only remedy which the Board could give you would be to cancel this new rate which the Lethbridge growers had obtained from the railway?

A. That is right; and we do not want that to be that way.

THE CHAIRMAN: He says that case decided that.

MR FRAWLEY: Q. That is what you say the Supreme Court has said?

A. That is my interpretation of it.

Q. So the only benefit of your appealing would be, it would be successful to this extent, that it would require the railways to take out the favourable rate they had given to the Lethbridge shipper?

A. Yes, so we feel that it should not be that extreme.

Q. However, you say the state of the statute and the interpretation put upon it by the Supreme Court is such that you would have the right to object to the rate on potatoes from Lethbridge to Winnipeg, the only result of which would be to have that special rate taken away from the growers, and you say your shipment of potatoes to Winnipeg is a very spasmodic thing?

A. For example, if you---

Q. That is so, isn't it?

A. I think---

THE CHAIRMAN: The whole situation is that Mr. Matheson says the Act should be amended.

MR FRAWLEY: Quite so.

THE CHAIRMAN: And that the Board should have the power to fix a rate.

MR FRAWLEY: I will go this far: Certainly if the

statute will say that, I am almost inclined to join with Mr. Matheson in seeking the amendment of a statute which would do that. However, that is the situation.

Q. Now let us go a little further---

A. Well, let us extend your case down to Toronto, where there is actually a large movement of potatoes.

Q. From?

A. From Nova Scotia.

Q. Yes?

A. Or from say Prince Edward Island, Nova Scotia and New Brunswick. There we would have an actual case where we are shipping at 8th class rates as reduced under the Maritime Freight Rates Act. Let us say that you have got a special commodity rate from Lethbridge down to Toronto which was say 50 or 60 or 70 per cent of the 8th class rate. We could protest, you see, but all the powers the Board would have would be to cancel that rate. Now, we might not be so concerned about that particular adjustment; that ratewise it might be so materially higher that it might not concern us. I am speaking of the practical day-to-day treatment of these things.

Q. Let me put the question a little differently. There is a movement, we were told, from Lethbridge, southern Alberta, to Winnipeg, and you say you do in there sometimes -- very infrequently, no continuous movement, but you do sometimes ship potatoes as far as Winnipeg?

A. Let us assume there is a scarcity of potatoes in the west.

Q. Only when there is an emergency situation, then you may go in. Now, let us take further west, say Regina. Now, except in very, very exceptional circumstances, the Prince Edward Island potato grower would not seek Regina as a market?

A. Incidentally, I should qualify this. There might be some seed potatoes from time to time, but the general table stock---

Q. Now, suppose these Lethbridge producers induced the Canadian Pacific to give them a better rate to Regina, a better rate on potatoes to Regina; do you feel -- I am only thinking of your rights, not what you would do -- do you feel you would have a right under the statute to protest the making of that special rate from Lethbridge to Regina, where your potatoes never go?

A. That is my understanding of the Act. We could step in and say we want a corresponding reduction under section 8 of the Maritime Freight Rates Act.

MR O'DONNELL: The Supreme Court did not agree with that.

MR COVERT: I notice in the one case Mr. Frawley said, "Could you protest?" and the answer always has been, "Well, we would ask for equalization." I just want to get that cleared up.

THE WITNESS: But they could not give us equalization. The net result would be the cancellation of the special rate.

THE CHAIRMAN: Q. What is that you are saying now?

A. Under the Maritime Freight Rates Act, under section 8, they would not give equalization. The only power they have is to cancel the rate from Lethbridge to Regina.

MR FRAWLEY: Q. So the result of this legislation as interpreted by the Supreme Court is, as we have said a minute ago, that on this rate from Lethbridge to Regina which the growers got the railway to give to them in the interest of building up their infant industry, you would be able, you say, to go to the Board and as a result of your protest get the rate from Lethbridge to Regina can-

celled?

A. That has never happened, Mr. Frawley.

MR O'DONNELL: The Supreme Court did not hold that; just the reverse.

THE CHAIRMAN: It is a question of interpreting the Act, isn't it? Doesn't it come down to that? You are asking Mr. Matheson whether he considers they have a right.

MR FRAWLEY: Probably it does not go any further than that; but at least Mr. Matheson, who is the transportation---

THE CHAIRMAN: If you take the Act as it is, there it is, and it has been interpreted on at least one occasion. Other occasions to interpret it can only arise when somebody makes an application of some sort. Of course, you must always bear in mind that Mr. Matheson is asking to have that Act amended, and is going to submit to us his suggested amendments in writing.

MR FRAWLEY: Let me just ask, then, my lord, if I might, one question.

Q. Would the amendment which you have in mind, Mr. Matheson, have as its object the removal of the state of affairs which you at least think obtains now, which would bring about a cancellation of this special rate as far away as from Lethbridge to Regina, at the behest of the Maritime Provinces?

MR O'DONNELL: Without any prejudice being proved.

MR FRAWLEY: Yes, in the absence of any prejudice. I took particularly Lethbridge to Regina as indicating a movement in which the Prince Edward Island potato grower would not be interested at all.

THE WITNESS: It is right in my brief, Mr. Frawley, the suggested amendment; in other words, that we do not want to have it so restricted that some shippers or some commun-

ity, and also the carriers, are not going to be tied in regard to putting in special rates to meet special conditions and circumstances; and, as I said before, I doubt very much, unless it appeared that an adjustment would be of detrimental consequences to us, or that there was a possibility that we will never be interested in the market, we would not act on it at all. You see, there is an illustration given in the '41 case I referred to the interpretation case, of apples, for example, from British Columbia, and it was very definitely put there by Chief Justice Duff in his decision; he gives an illustration of just that particular point you are raising.

MR FRAWLEY: Q. Let me put just one other thing to you. Suppose that you had a rate now in the Maritimes between Moncton and Halifax to move a certain commodity that was manufactured say in Moncton or in Sackville -- I am speaking now of this local movement from Sackville to Halifax -- and suppose the rate in Alberta to move that same commodity the same distance, say from Calgary to Edmonton, was lower; say that it was a lower rate than the rate from Sackville to Halifax. Now, these are two separate movements, one between Calgary and Edmonton, one between Sackville and Halifax---

THE CHAIRMAN: There is no common market?

MR FRAWLEY: No common market at all, sir. This is some plant in Calgary getting its goods to Edmonton, and a plant in Sackville getting its goods to Halifax.

Q. If that manufacturer of the same general commodity got a better rate from Calgary to Edmonton than your manufacturer in Sackville got going to Halifax -- I am hoping that those mileages are somewhat comparable, and if they are not, I am speaking of comparable mileages -- now, what would be the situation there under the Maritime Freight Rates Act?

A. That is, in connection with the movement within?

THE CHAIRMAN: Apart from the Maritime Freight Rates Act, two things: Would there be any violation of the principle of equity there, equalization? And, secondly, what does Mr. Matheson think ought to be the law?

MR FRAWLEY: Yes, sir.

THE CHAIRMAN: Once again you are asking him to interpret the law.

MR FRAWLEY: That is true.

THE CHAIRMAN: That same question occurred to me this morning, whether Mr. Matheson goes so far. He says that even if there is a market which is not at all common to the people of the west and the people of the east, nevertheless if a concession is given say in the west such as you speak of, from Calgary to Edmonton, then should a similar rate be struck for a similar distance for the same commodity in the Maritime Provinces, just by the fact that the rate given in the west is lower?

Q. That is a fair question, isn't it?

A. Yes, sir.

Q. What have you to say about that?

A. Yes, I have---

Q. Or have you anything to say about it?

A. Yes, I have, sir. The Maritime Freight Rates Act, sir, as you will remember, goes back to July 1, 1927.

Q. Yes?

A. And that reduced the rates within the Maritimes as of that particular date; that is, the rates of June 30th were reduced as of July 1st, 1927. Now let us say, because of changed conditions and circumstances in Alberta, a case arises -- and I believe there are numerous cases/must have arisen -- where there is a rate reduction say from X to Y. I will give you an illustration -- of course, this is competitive rate; I am trying to get away from competitive rate.

We will take the pick-up and delivery service in that particular area -- no, that is not a good illustration. Let us assume that our rate as of June 30th was the same as the rate from say Lethbridge to Regina, and there is the reduction under the Maritime Freight Rates Act. Then immediately after that reduction took place there were point-to-point rate reductions all over Canada, not necessarily from Lethbridge to Regina, but Winnipeg to different points and from say Windsor to Toronto and so on. I am not speaking of competitive rates, but there was this general downward trend. I would say, according to my interpretation, Mr. Chairman, of the Maritime Freight Rates Act, that then we would be entitled to a corresponding adjustment.

MR FRAWLEY: Q. Then you do say that if you found that there was a rate reduction sometime since 1927 in this particular commodity that I am speaking of hypothetically, between Calgary and Edmonton, and that was higher than your rate as it then was, as it was established under the Maritime Freight Rates Act---

A. Taking it back to July 1st, 1927.

Q. Then you could go to the Board and ask to have your rate reduced to this rate that you would find between Calgary and Edmonton, even though there was no common market; there would be no attempt to establish prejudice, but you say that the general purport of the Maritime Freight Rates Act was such---

A. That is right.

Q. That you must always be kept 20% under any other rate anywhere in Canada?

A. That is my general understanding of it.

MR O'DONNELL: The Supreme Court did not agree with that.

THE WITNESS: Are you referring to the potato case

now?

MR O'DONNELL: Yes.

THE CHAIRMAN: Did such a case ever come before the Supreme Court?

MR O'DONNELL: I think the potato case, my lord, was somewhat of that kind.

THE CHAIRMAN: I would imagine that the potato case would have a common market. Here we are assuming that there is no common market at all.

MR O'DONNELL: I do not know of any case of that kind. They have not gone that far actually, but in the potato case, where there was perhaps a semblance of a common market, it was held there was no prejudice and therefore they had no right to complain.

THE WITNESS: Mr. Frawley is raising a question, Mr. Chairman, of a commodity rate, as I understand it, not necessarily a competitive rate. When you are dealing with a competitive rate, there is a different situation altogether. There is a Supreme Court decision there.

THE CHAIRMAN: Q. We are not dealing with competition; we are simply taking a rate which for the same commodity is cheaper in Alberta than it is in Nova Scotia. Do you consider that constitutes a prejudice to you that should be compensated by giving you the same rate as the shippers in Alberta?

A. That is right. I will go a little further on it, sir. Let us assume that in Ontario, and instead of saying all the class rates were reduced, let us say innumerable point-to-point commodity rates related to the class rates in Ontario, and let us assume that immediately the Maritime Freight Rates Act was passed all the rates in that territory -- speaking not of competitive rates, just of commodity rates -- came down and lowered the level of rates say to the

20% as we got under the Maritime Freight Rates Act, because if you are dealing with one specifically the same principle would have to apply to the general -- we say that then our level should come down as well, and that is my interpretation under the Maritime Freight Rates Act.

MR FRAWLEY: Q. It is not only that you think that should be brought about and it would be a good thing, but you say that the statute intended to give you that?

A. Yes. You see, otherwise you could render the Maritime Freight Rates Act nugatory.

THE CHAIRMAN: Q. How do you say that, even if you are not interested in the market?

A. Well---

Q. You see, in the case Mr. Frawley has given you, of the haul between Calgary and Edmonton, you are not shipping any goods there?

A. No.

Q. Then you could not say that the Act is of no use to you, if the rate between Calgary and Edmonton is lower than the rate between Sackville and Halifax?

A. Of course, sir, there are two points to this thing. There is one in which we are interested in getting goods out of the market to other territories; then there is the internal situation, that is, the rates within our territory, and our level of rates---

Q. Pardon me; perhaps I should have said, if you find that the rate from Calgary to Edmonton is on a lower basis than your rate from Nova Scotia to Montreal.

A. If they were on a lower basis---

Q. How would it prejudice you?

A. That is where the angle of prejudice comes in. We would not be prejudiced on that particular point, sir.

Q. Now, you claim that although you would not be pre-

judiced, you should have the right to claim a reduction anyhow?

A. Yes, because if you are going to deal with the specific angle---

Q. Do you say that arises out of the present Act, or would be by virtue of some amendment to the present Act?

A. That arises, according to my interpretation, under the present Act.

Q. That gives you that to-day?

A. It gives us that to-day.

MR O'DONNELL: But the Supreme Court held that it does not.

THE WITNESS: You are dealing with competitive rates; you are dealing with the potato case, which is a different thing.

THE CHAIRMAN: We are trying to get the matter away from a common market.

MR O'DONNELL: My suggestion is that under the Maritime Freight Rates Act interpretation case, which is 41 C.R.C. 56, whether the rate was a competitive rate or a commodity rate or any other rate did not make any difference; all that had to be---

THE CHAIRMAN: You had the same market in view.

MR O'DONNELL: Yes, there was that.

THE CHAIRMAN: There was that difference from this case.

MR O'DONNELL: Might I just make this observation on that case, my lord. I do not quite agree with my friend Mr. Matheson's interpretation of that case. That case dealt principally with whether or not the C.P.R., having filed tariffs, were entitled to get the subsidy provided by the Act, and the C.P.R., as you will remember, my lord, had the right under section 9 of the Maritime Freight Rates Act

to file tariffs. It did not have to, but where it did file tariffs the question was whether or not it was entitled to the subsidy along with the C.N.R., and it was held that it was. That is the point, the principle, in that case.

THE WITNESS: The Chief Justice in rendering his decision rendered a few obiter dicta in that particular case, and one of them was to give an illustration---

THE CHAIRMAN: Q. He gave what did you say?

A. Obiter dicta.

Q. You say he gave what?

A. Gave a specific case, for example, as an illustration, of the rates on apples from B.C. going into a particular market and the rates in connection with apples from the Maritime Provinces.

Q. Going into the same market?

A. I am a little hazy on that, Mr. Chairman, whether that was going into the same market or not. I think perhaps it was going into the same market, but it has been my interpretation of the Maritime Freight Rates Act that it would apply to ^a/specific instance outside another territory, and whether -- the Chief Justice went on -- that is my interpretation of the Supreme Court decision, not being a lawyer; a lawyer might have a different view of it.

MR. F. D. SMITH: Mr. Chairman, just one thing I wish to say. In the examination by my friend Mr. O'Donnell of Mr. Matheson he referred to the recommendations in the Sirois Report. I do not want to take the time of the Commission in dealing with these matters, but I thought it would be of service if I gave the way it was dealt with. You will find the specific submissions, my lord, in book 2, pages 190 to 193 and 198 to 199, dealing specifically with the submissions which were made by the Maritime Transportation Commission in respect of these competitive rates, the other

point being with respect to the enlargement of the powers of the Board of Transport Commissioners.

That is all I have to say, my lord.

MR O'DONNELL: I had certain other references which I mentioned, too.

(Page 7470 follows)

MR. COVERT: Mr. Chairman, the next submission is that of Woollings Forest Products, and Mr. E. V. Woollings is here.

I might say the next two briefs are both short, and both people are here from out of town. I would like very much if we could get them finished today.

E. V. WOOLLINGS, called:

MR. COVERT: Q. What is your name, sir?

A. E. V. Woollings.

MR. O'DONNELL: Mr. Chairman, I would like to observe that, so far as I know, we have had no brief from Woollings Forest Products and, as I understand it, anybody wishing to make representations was supposed to file a brief sufficiently in advance to permit interested parties to know what the subject-matter, or the representations would be, in order to facilitate a proper understanding and discussion of the various questions.

THE CHAIRMAN: I do not know of any brief myself. I know of a letter.

MR. COVERT: It is in the form of a letter.

MR. O'DONNELL: We have not got the letter.

MR. COVERT: Did you not get it?

MR. O'DONNELL: No. The only letter we have is dated November 3, 1949, and is addressed to the Canadian National Railways, Law Department, and it reads as follows:

"Regarding your inquiry in connection with copies of my brief to be submitted to the Royal Commission on Transportation. As yet I have not prepared any formal brief but if I do so I shall forward you copies of same. Up to now

it has been my intention only to present orally to the Commission the facts as they affect our business."

I do not know what Mr. Woollings business is, except that I would gather from the letterhead that it relates to Forest Products.

THE CHAIRMAN: Let us hear then from Mr. Woollings, and if you require any time to answer him, you will certainly get it.

THE WITNESS: May I go on? Might I explain that I have not prepared any formal brief.

Harold Duffy is the traffic manager of the Woollings Company, and I am also a director. He was to be here today, but, unfortunately, he is ill in hospital and could not be here. He will, at a later date, if possible, attend. I wanted to explain that.

So, with your permission, I shall read that letter which I wrote to you in July, so that these gentlemen will know about it.

THE CHAIRMAN: That is the best way to start off.

THE WITNESS: I am sorry. I did not send this letter out; and I am sorry that I did not realize that it was necessary. I thought you could do it of your own free will.

This is only a short letter, and I will read it, as follows:

"WOOLLINGS FOREST PRODUCTS

Englehart, Ont.

July 29, 1949.

The Honourable Mr. Justice W. A. Turgeon,
Chairman, Royal Commission on Transportation,
Department of Transportation,
Ottawa, Ontario.

Dear Sir; Re: Pulpwood Freight Rate, Ontario
Northland Railway District.

As I am alarmed at the falling off in the pulpwood business in the Ontario Northland Railway area where we are located, I would like to present the following facts before you for consideration, that some relief may be given in freight rates, thereby stimulating business.

For the past 35 years or more we have been in the pulpwood business on the Ontario Northland Railway (previously the T&NO) and down through the years have sold considerable quantities of pulpwood to the Armstrong Forest Company at Johnsonburg, Pennsylvania, two-thirds of which was poplar. This market has been a God-send to settlers, store-keepers, and others along the lines of the Ontario Northland Railway as there has been very little sale of poplar to other companies.

The growth of poplar is very rapid and consequently this area could provide many times the present market requirements. Poplar could be considered a weed amongst trees as the seeds blow through the air and now considerable areas are covered with poplar that once supported pine and other species. There are hundreds of settlers throughout the area served by the Ontario Northland Railway who have 40 to 100 acres of bushland on their farms, mostly poplar. These men have been producing from 50 to 150 cords per annum almost continuously, some of them right from the start over 35 years ago. This source of revenue has provided them with cash for their farms, flour and other necessities, especially in the years when

other crops failed or they were not able to sell their farm produce. If this market is not regained it will only mean that these same settlers, and other new ones who are clearing land will only have to burn their poplar in the process and revenue therefore will be lost to the settlers as well as the railways, business men and everyone else concerned.

During the last few years the through rate on pulpwood to Johnsonburg, Pennsylvania, has been raised several times which has brought same from Bourkes, for example (which is the centre of our pulpwood producing area) from 26¢ to 41 $\frac{1}{4}$ ¢ per hundred pounds or an increase of 59% in a period of 6 years."

That was as of July 29.

"In the same period, for example, --"

And this is only an example.

-- the rate on pulpwood from Bourkes to Thorold, Ontario, went up from 16¢ to 21¢ per hundred pounds, or 16. 66%. I am not saying that the rate to Thorold is too low, but do feel most sincerely that the increase in freight rate to Johnsonburg, Pennsylvania, is out of all proportion and most unfair and discriminatory and the net result has been the loss of this very essential business to the railways and all concerned.

This time last year we had contracts for 50,000 cords of pulpwood for delivery to Johnsonburg, Pennsylvania, with over 1,200 men in the woods. Today we only have contracts for 5,600 cords and have less than 200 men in the woods, including settlers and everybody. The result of this has

been an increase of unemployed men in towns such as Kirkland Lake and Timmins, which men would have found employment had the above mentioned rates remained at a competitive level.

We are shipping now, but it is wood remaining on hand from our 1948 contracts. This wood was brought out to gravel roads in the winter time and is now being trucked and loaded on cars. We have not been able to negotiate any contracts of consequence since the last freight rate increase.

I have investigated and found to be true, that the Armstrong Forest Company can obtain wood which will serve their purpose from lower freight rate zones in the United States and Canada. After all these years we would like to retain this business for the O.N.R. District, which has proven so beneficial to the settlers, business men, railways and everybody else concerned down through the years."

Unfortunately in the original letter there was a typographical error, and it should read: "recommending adjustments. . ."

"I trust that when your Commission is recommending adjustments of rates you will take all of these factors into consideration, that some relief may be given to us in order to regain this business. I would like to appear before your Commission at the hearings at Ottawa and would ask you to please advise on what date the same will be held. Thanking you in advance."

THE CHAIRMAN: Can you tell us now something about this Ontario Northland Railway? Is it a Dominion railway?

MR. COVERT: My understanding, Mr. Chairman, is that it is a provincially-owned railway.

Mr. Woollings, I think, seemed to be under the impression that there was to be some change. Is that right, Mr. Woollings?

THE CHAIRMAN: What is that?

MR. COVERT: That there was to be a change and that it would come under the jurisdiction of the Board of Transport Commissioners.

THE WITNESS: Apparently the Board of Trade of Kirkland Lake had asked the railway to consider this matter; and I understand from Colonel Randles, Chairman of the railroad, it was in the newspapers here a month ago, that the railway was going to come under the jurisdiction of the Board of Transport Commissioners.

THE CHAIRMAN: Q. Is the rate being discussed a through rate on a point in Pennsylvania?

A. That is right.

Q. What element does that introduce into the question?

MR. COVERT: Q. Mr. Chairman, the first question I would ask Mr. Woollings is whether or not this rate, which is referred to in the first paragraph of page 2, is a joint through international rate?

A. That is right.

Q. And one of the difficulties, as I understand it, is that it has not been under the jurisdiction of the Board of Transport Commissioners?

A. That is right.

Q. And the American part of the rate -- in other words, there is no one in Canada before whom you can even go and discuss these rates?

A. That is right. There is nobody in Canada or in the United States. We approach Canadian railways, and they tell us they had to take these increases and that they were forced upon them by the American railways.

If we go to the American railways, they say: You must go back to the point of origin; and we thus race back and forth, and there is nobody, or no commission to go to, to discuss international rates, unfortunately.

THE CHAIRMAN: Is the whole of the haul through Canada on this one railway, or does it go to other railways?

MR. COVERT: My understanding is that it goes to other railways.

THE WITNESS: Yes. It goes to the Canadian National and to the Canadian Pacific at North Bay, and is carried through to the American border.

MR. COVERT: Perhaps you would like to have him tell the Commission about the termini of the railway, Mr. Chairman, and how they are routed?

THE CHAIRMAN: Yes.

MR. COVERT: Q. Yes. Would you do that?

A. Well, the railway originates at North Bay and it goes north to Kirkland Lake.

The Canadian National and the Canadian Pacific connect at North Bay, and it goes through to Cochrane, and it connects with the Canadian National again.

Q. Would you give the Commission an example of the route that these shipments of yours follow? Over what railways?

A. We will take Connaught, on the Timmins branch. It will go down on the O.N. R. railway for about 200 and

some miles to North Bay; and from North Bay it will go to the Cobourg car ferry, via either Canadian National or Canadian Pacific, usually on a fifty-fifty basis; and from the Cobourg car ferry it will go via the B.R.P. to Pennsylvania.

COMMISSIONER INNIS: Q. What is the distance from North Bay to the Cobourg car ferry?

A. I am not sure. Some of these railroad men could tell you that. I am not just sure.

MR. SINCLAIR: It is around 250 miles, Mr. Jefferson says.

THE CHAIRMAN: From where?

MR. SINCLAIR: From North Bay to the car ferry, to Cobourg, that is.

THE WITNESS: And if this information is necessary, I think it is around 170 miles from there to Johnsonburg. So you will see that about two-thirds or three-quarters of the mileage involved is in Canada.

THE CHAIRMAN: Partly it is on a railway which is under the Board of Transport Commissioners.

COMMISSIONER INNIS: Q. Can you not appeal to the Board of Transport Commissioners on the ground that you have 250 miles of railway under their jurisdiction?

A. My understanding is no, not on an international rate.

MR. EVANS: Perhaps I could help you, Mr. Woollings.

The local rate within Canada would clearly be within the Board's jurisdiction.

The difficulty that I think the witness finds himself in is that he has got a special low through rate, and that it is not divisible into factors, as a

combination of local rates would be; and the result is that you have a split jurisdiction between the Board in Canada and the United States Interstate Commerce Commission.

But he can, also, you see, have the advantage of a local rate in Canada and the local rate in the United States, and he can always attack that factor by making, in the case of Canada, representation to the Board, and, in the United States,^{re} the United States rate to the United States Interstate Commerce Commission.

But where you have this joint through rate, you have no division. You have a split jurisdiction, and no one can operate independently of the other.

My understanding is that the witness is now discussing that question with the United States and Canadian railways, this matter of a rate; is that true?

A. We have been. Our freight traffic manager has had this matter up for the past couple of months.

MR. O'DONNELL: And the matter is further complicated by reason of the fact that part of the Canadian haul is over a provincial railroad?

THE WITNESS: Yes.
CROSS EXAMINATION BY MR. EVANS:

MR. EVANS: Q. The through rates still apply from Ontario northern points to United States points?

A. Since the Ontario Northern Railway is going to come under the jurisdiction of the Board of Transport Commissioners, could not this Commission recommend some set-up whereby^{re} these through international rates, one would have some board or commission to go to to discuss the whole through rate, that is, if we want the business in Canada, and if the railways want the business, and we want American dollars?

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discussion of the general principles of the

theory of the subject.

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Is it not logical that there should be some set-up? And could not this Commission recommend that there be some approach to this problem, which has been a big problem to all shippers under international rates?

Q. I thought I would help both the Commission and the witness. He certainly has a remedy. He must, however, proceed in the way of an attack on the local rates. That is to say, the local rate within Canada must be just and reasonable.

THE CHAIRMAN: Part of the carriage in Canada is on a provincial railroad.

MR. EVANS: That is true, Mr. Chairman.

THE CHAIRMAN: Can the Board do anything at all in the way of controlling that?

MR. EVANS: That may be a problem which has not yet arisen. But he has got a forum to go to. He has got the Ontario Board, with regard to the Ontario Northland.

But my point is that as long as the local rate within Canada to the border point is just and reasonable, it cannot be attacked. But there is nothing to prevent him from attacking it; and he has got a very much lower rate than a combination of local rates; and it may be that he has got something better than what the Board has treated as a just and reasonable rate, and that his difficulty is not really a difficulty.

COMMISSIONER INNIS: This is really part of a very long controversy going back over the years as to how these rates should be handled, these international through rates on wood pulp.

MR. EVANS: I think there are a number of decisions and cases on it, yes.

THE CHAIRMAN: Has the shipper an option to

take two local rates, one in Canada and one in the United States?

MR. EVANS: Oh, yes, but the through rate is almost always lower.

THE CHAIRMAN: And in so far as that portion of the haul is considered which is within Canada, there is control over it by the provincial board or by the Board of Transport Commissioners, according to the jurisdiction?

MR. EVANS: Oh, yes. There is full jurisdiction over the haul within Canada. And in the United States there is full jurisdiction by the Interstate Commerce Commission over the haul in the United States. But that jurisdiction only extends to the points where you can find a local rate; and if the witness has a through rate, which is lower than a combination of the local rates, he has got something that is better than the local rate; and his only remedy is to attack the reasonableness of the local rate. That is the way I understand it.

COMMISSIONER INNIS: Your point would be that in attacking the reasonableness of the local rate, he might, by that way, get at the through rate?

MR. EVANS: He might, yes.

THE WITNESS: We certainly do not feel that the rate is reasonable, as my friend thinks it is. But as I said, a little while ago, our freight traffic manager hopes to be here. And as far as technicalities go, I cannot go into it, because I do not understand it.

But I do know, and I have worked along with him in attempting to get freight reductions, about three different times. And each time we have gone to the Canadian railways, they told us that the fault lay

with the American railways. And when we go to the American railways they tell us just the opposite, and we do not seem to get very far.

But we do feel that if some board could be set up that we could talk to, we would get some benefit for Canada, and some business, it may be. I do not understand you, the way you are trying to put it over.

MR. EVANS: I can tell you the situation in regard to the increase in these rates. The position has been: these increases in international rates which have been made in the past few years, have followed increases by the Interstate Commerce Commission.

Now then, when the Interstate Commerce Commission authorizes an increase by the United States lines, they have before them the through rates, filed as one rate; and the United States lines have authority to increase that through rate. And they also, concurrently make application to the Board, for their authority to increase the through rate.

You can see what happens. If the Canadian line does not make an application to the Board here to increase the through rate, the only people who have authority to take an increase would be the United States roads; and they would get the increase on the through rate, which would not do a shipper in Canada a particle of good.

So the Board has always recognized that both Canadian and United States lines, through their respective commissions, concurrently get joint authority to increase through rates.

THE WITNESS: That has been the trouble.

MR. EVANS: Q. It does not do any good to apply for an increase.

A. You may correct me if I am wrong. Then, when there is an increase in Canada as well, do not the Canadian railways go after that too?

Q. No. You cannot have two increases.

A. But our increases on the international rate on pulpwood, for instance, have been 59 per cent, plus whatever increases have come in since; but the rates for Canada have been 21, plus 8 per cent.

Q. That 59 per cent follows increases authorized by the Interstate Commerce Commission, and whether the railways take advantage of it won't help you a particle. The United States lines have got authority to increase the through rate, and they have done so.

A. Within Canada, as well.

Q. The through rate is one rate.

A. It doesn't seem right to me; but I see your point, all right. I think I understand it now. But it doesn't seem right to me that one mill makes some commodities, let us say book paper, and have 16.6 per cent increase, while another mill has 59 per cent increase on their wood supply.

Q. You will find, Mr. Woollings, that not only was the local rate increased by 16 per cent, but that increase was also applied to any local rate to the border within Canada; and that there may come a time -- I am not telling you when it will come, because I do not know -- but there may come a time when the local rate to the border is very much cheaper than the through rate, in combination with the local rate.

A. They said that the mill got an advantage.

THE CHAIRMAN: Q. These two points, Bourkes to Thorold, they are both in Ontario?

A. Yes.

Q. And the other road which connects with you is partly in the United States?

A. That is right. But I would like to say that the fact still remains: we are rated out of business. We cannot sell our wood.

After all the years, we would certainly like to be in a position to sell wood. We have had this connection for a long time; and two-thirds of the wood we have been shipping has been wood you cannot sell locally, anyhow. And we would like this Commission, if it sees fit, to do something, or recommend something that would help us.

Q. Apparently you are interested only in this one market in Pennsylvania?

A. For our poplar wood, yes.

Q. And you recognize, in any case, that it is inside of another country?

A. That is right.

Q. All I can say is that we will give this the very best possible consideration to what you have said here.

A. Thank you.

(Page 7490 follows)

MR. COVERT: Mr. Chairman, I thought while Mr. Woollings was here -- I believe, Mr. Woollings, you are also a director of T. S. Woollings Company Limited?

A. That is correct.

Q. And I understood they intend to make an application to this Commission?

A. Yes.

Q. What I was going to suggest was that when you do file a brief, that you also have them send copies in advance to the railways. Anybody else that wants copies of those briefs, now is the opportunity, because I expect that the Secretary's office of the Commission did advise your company that they should send copies to the railway?

THE SECRETARY: I might explain, sir, the situation on this question of briefs was handled at the original meeting in May, and arrangements were made at that time for the exchange of briefs between interested parties, and that the Secretary's office would not act as a clearing house, and that all we required was what the Commission counsel and the Commission staff wanted for their own use. To assist those appearing before the Commission, we have from time to time prepared and distributed a list showing all the organizations who intend to make representations with the appropriate name of the official and his address and it has been left up to each party appearing to contact those organizations whose brief he wishes, and that was the arrangement which we followed. We have never attempted to distribute briefs ourselves to other interested parties, but we have made that information available.

THE WITNESS: Well, I will say this now, that if the interested parties will write to Harold Duffy,

Freight Traffic Manager, T. S. Woollings Company Limited,
South Porcupine --

MR. O'DONNELL: Why doesn't Harold Duffy write
the railways?

MR. EVANS: We have already written two or
three times.

THE WITNESS: He has been ill.

MR. O'DONNELL: Just ask him then if he will
be good enough to write direct to the Canadian National
Railways, Mr. H. C. Friel, Chateau Laurier,
Ottawa.

A. I will get that address from you.

Q. Might I ask a few questions, Mr. Chairman?

THE CHAIRMAN: Yes.
CROSS EXAMINATION BY MR. O'DONNELL:

MR. O'DONNELL: Mr. Woollings, isn't part of
your trouble this, that the Pennsylvania mills have
stopped buying poplar and that they are using southern
pine and local hardwoods which they can get and use at
prices that are more attractive to them than the importa-
tion into the United States of your poplars?

A. I may explain this, that the market is fairly
steady to this company because they make the paper for
the Saturday Evening Post, Ladies Home Journal, the
Country Gentleman and the Holiday Magazine.

Q. That is the company at Johnsonburg?

A. Yes.

Q. And the Armstrong Forestry Company?

A. They are the purchasing agents.

Q. Do you know Gordon W. Jones of Bancroft?

A. That is right.

Q. We had him in Toronto and he came before the
Commission in Toronto on the 5th of August, 1949, and,
Mr. Chairman, his evidence will be found in Volume 31,



page 6091 and following. I do not want to waste the time of the Commission. As I understand it briefly, Mr. Woollings, Mr. Jones' trouble was the same as yours and that is that the Johnsonburg mill began using southern pine and local hardwoods which was more attractive to them for their purposes than would have been the poplar which you had previously sold to them?

A. I was going to come to that, but was showing you that the market was steady. It is true they are using southern pine and local hardwoods, etc., but it is as a result of the 59 per cent increase in freight rates which has put our wood out of reach. They would prefer our wood; they still tell us that. We have a better quality wood, but it is not the quality of the wood or it is not that the wood is better suited. Our wood is better quality and they would like to use our wood but they cannot see their way clear under the present freight rate set-up.

Q. The American rates have gone up far more than the Canadian?

A. But they do not go very far.

Q. But the combination of the increase on the American roads and the increase in the over-all through rate has made it so large, that in the case of Mr. Jones and the Johnsonburg company, it was felt by the Johnsonburg people apparently that they would prefer to use southern pine and the local hardwood and that that is what put you out of the market.

A. Providing we can compete in our price delivered, they would prefer our wood even at a couple of dollars difference, but the difference is too great now.

Q. Have you found this year in the Canadian market

there has been a considerable drop in demand for pulpwood in Canada?

A. The mills we are dealing with, no, but I do understand that some other mills, yes.

Q. Generally speaking, yes?

A. Some mills, yes.

THE CHAIRMAN: Thank you, Mr. Woollings.

MR. COVERT: The next submission is that of the Canadian Pulp and Paper Association, Mr. C.E. Hawkins.

CHARLES E. HAWKINS, called:

EXAMINATION BY MR. COVERT:

Q. Your occupation, Mr. Hawkins?

A. I am the Traffic Manager of the E. B. Eddy Company, and Chairman of the traffic section of the Canadian Pulp and Paper Association.

Q. Now you have submitted a brief to the Commission. Do you want to read this, or would you allow it to be taken as read and copied into the evidence?

A. It just depends on the attitude of the Commission. I will read it, if necessary.

THE CHAIRMAN: How about the railways in this case?

A. They have copies, I think.

MR. O'DONNELL: We have no objection.

MR. COVERT: I think then it might just be taken as read and then if there are any comments that you wish to make, to add in addition, just let us have them.

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1.

SUBMISSION OF THE CANADIAN PULP AND PAPER ASSOCIATION
TO THE ROYAL COMMISSION ON TRANSPORTATION

It is the considered opinion of the Canadian Pulp and Paper Association, that the subject hereinafter dealt with is one which it may rightfully draw to the attention of the Commission established by virtue of Order-in-Council P.C. 6033, December 29th, 1948.

The Railway Act, Section 325, reads in part "The Board may disallow any tariff or any portion thereof which it considers to be unjust or unreasonable, or contrary to any of the provisions of this Act, and may require the company, within a prescribed time to substitute a tariff satisfactory to the Board in lieu thereof, or may prescribe other tolls in lieu of the tolls so disallowed".

Such a provision as above quoted is obviously just and reasonable and provides the Canadian shipper with adequate protection against the continuation of any tolls found by the Board to be unjust and unreasonable; it falls short, unfortunately, of providing reparation for tolls paid prior to such official decision. If a toll is proven to be of a level unreasonable, and adjustment is made to a proper basis for subsequent shipments, it is manifestly clear a measure of protection should be accorded the shipper who has made shipments prior to such adjustment. The anomaly presented by the present Act not only places the shippers in an unfair position, but precludes the carriers from making restitution.

Despite our reluctance to interject into this submittal any reference to commerce regulations of another country, we do feel it incumbent upon us to refer briefly to the treatment of the reparation problem in the United States where cognizance of this matter was taken when the Interstate Commerce Act was drawn up. Our

southern neighbour is the best customer of this Industry and, as a consequence, the preponderance of our tonnage is shipped across the border. In the main such traffic moves on rates, the level of which, for understandable reasons, are greatly influenced by the rate adjustments prescribed for that country. This has meant the Canadian carriers, being parties to the through haul have, rate-wise, benefitted to the same extent, generally speaking, as to their United States connections. We believe this is as it should be, but do feel, by the same token, the Canadian shipper is entitled to the precise measure of protection as is accorded his United States competitor.

Under the Interstate Commerce Act of the United States reparation shall be ordered by the Interstate Commerce Commission in instances of those who have been assessed and have paid rates and charges which, although duly appearing in lawfully filed tariffs, have been adjudged subsequently by the Commission to be unjust and unreasonable.

We respectfully submit that the Railway Act as it is now constituted imposes a hardship on the Canadian shipper which we confidently believe was never intended and it would appear that an amendment to the Act to overcome its presently limited scope would be endorsed most heartily by all Canadian shippers.

Respectfully submitted,

Secretary, Traffic Section
CANADIAN PULP AND PAPER ASSOCIATION

THE WITNESS: Well, gentlemen, we are particularly concerned with this matter of reparations as we mentioned in the brief, and as 75 per cent of our products, newsprint particularly, moves to the United States -- approximately last year, I guess, 390,000 tons out of a production of 400 and some odd thousand under joint rates authorized by the Board of Transport Commissioners and the Interstate Commerce Commission. We feel that we should be entitled to the reparations on any rates which were found out of line after they were published. I would like to give you an example of one case. As a general rule when increases in rates are authorized in the United States the Canadian Board of Transport Commissioners authorizes the same increase on international traffic where there are **through rates**.

Now in one case we have a movement of sulphur from Texas points to the various Canadian mills. In 1947 the Interstate Commerce Commission authorized an increase of 20 per cent and in 1948 a further 10 per cent increase, but they said that these rates were too high and that they should not exceed 1-1/2 cents per hundred pounds and that any charges which were assessed on the 20 per cent basis or the 10 per cent basis should be refunded where they exceeded 1-1/2 cents. Now, we have to try to get this money back, but to do so it would be necessary for us to go to the United States and file claims for reparations, but we do not think the Canadian carriers on the other hand can participate in it because they would not be in accordance with the Canadian regulations and rules and we thought that there should be some amendment to the Act whereby matters of this type could be taken care of in Canada. That was our submission.

MR. COVERT: Now, Mr. Hawkins, there are just

a few questions. First, do you feel that the need for reparations is only in the case of international rates?

A. No, sir, I think that there might be similar instances in Canada where through error, possibly, the incorrect rates were assessed.

Q. Through errors?

A. Or other ways -- unjust rates.

Q. Now what I was going to ask you, isn't there a different situation in the U.S.A. than in Canada with respect to fixing maximum rates?

A. I believe there is, yes, sir.

Q. And would that perhaps not lead to a difference in the necessity for reparations?

A. Well, I think the Board also fixes other rates than the maximum rates, the standard mileage.

Q. But supposing they fixed a standard mileage rate for any weight below that, do you think it could still be held perhaps unjust and unreasonable so that reparations would apply?

A. I should think that if the Board was approached regarding a rate which anyone or rather one company thought was unreasonable and we were being hurt by having to pay that rate, perhaps not so far as reparations are concerned, but possibly they could do that and we think we should have that privilege of getting reparations if we were affected. On the other hand, if we were not damaged and the Board so found, then the rate would be justified without anything further.

Q. Then you think, Mr. Hawkins, there should be a case for reparations if a rate was found to be unjust and unreasonable. Is that correct?

A. Well, it is very hard for me to answer that. Some rates may be unjust and unreasonable, but the user

of such rates might not have been hurt particularly.

Q. That is, providing he could prove his hurt?

A. Yes, I would think in that case.

Q. And also, supposing the rate were discriminatory and the man proved that he was hurt, do you think there would be reparations in that case?

A. Well, of course, all rates are discriminatory to a certain point.

Q. Unjustly discriminatory?

A. If the user of the rates could prove that thereby he had been hurt, then it would be for the Board to decide the case, I would think.

Q. Then even taking the case of a rate that is unjust and unreasonable, but not unjustly discriminatory, do you think reparations should apply there?

A. Well, I think in this case that I referred to that this particular rate on the sulphur was unjust. It was not discriminatory, just unjust, and the Interstate Commerce Commission said, "Where you had exceeded the 20 per cent and 10 per cent by 1-1/2 cents we will grant reparations", and I think that is about the attitude we have regarding reparations.

Q. Do you know if in that case, was a rate fixed in the first instance by the Interstate Commerce Commission or were they simply rates compiled by the railways subject to complaint?

A. The rates on sulphur, if I am not mistaken (Mr. Buckingham knows more about this than I do) but I understand the rates from the Texas points were competitive rates, they were filed during the war to take care of rail movement because there were no ships. They were filed with the Interstate Commerce Commission and then were subjected to the various examinations set forth by that body.

(Page 7500 follows)

Q. Has your particular company or any members of your Association to your knowledge suffered from this lack of reparations in any cases other than in international tariffs?

A. I know of no instance offhand.

THE CHAIRMAN: Pardon me a moment, Mr. Covert, till I clear up a point here.

Q. The word "mistake" was used a while ago.

A. I said possibly, sir.

Q. It is not a question of somebody recovering a high rate imposed on him by mistake?

A. Well, in one case, yes, sir.

Q. Just a pure mistake?

A. Yes.

Q. That is, made him pay a rate higher than authorized by the rates?

A. I can give you an example, sir.

Q. Well, that is a totally different thing, you see.

A. Yes, but according to the Canadian regulations, in my opinion, even though it was a straight out-and-out error in the publishing of a tariff, we could not obtain the money that we had been paying, that was higher than say the charge that should have been assessed.

Q. Well, you see, you make a distinction. As I understand the case, in the United States it is this: The railways charge a certain rate, later on the I.C.C. hold that that rate was unreasonable and there must be a lower rate, then reparations go to those who paid the higher rate while it was prevalent; is that right?

A. Yes, sir.

Q. Now, that is one thing, you see, and here in Canada there is no provision for such a refund being made. But then when you use the word "mistake", do I understand

this to be the case, that sometimes the railway will overcharge a shipper through a pure mistake? That is to say, here is the authorized rate from this point to that point for this commodity, and instead of charging that rate they will charge him something higher by mistake, and he pays it; have you known that to happen?

A. Sir---

Q. That is a very different case, you see.

A. Well, this happened; it was an error, an oversight, on the part of the carriers, in my opinion. It was adjusted right afterwards.

Q. It was adjusted?

A. Yes.

Q. Oh, well!

COMMISSIONER INNIS: Q. You mean the rate was adjusted, or did they pay you?

A. The tariff was adjusted amending the rate.

Q. But you did not get any money?

A. It was our own company, sir, at that time, and I knew it was an error, and I did not ship any goods under it, because I was afraid of the complications that might have developed.

THE CHAIRMAN: Q. Did you ever actually pay some money that you ought not to have paid?

A. We did in the case of this sulphur, sir, coming up from the United States.

Q. You see, I am trying to get to a case where there is an authorized rate and some railway official makes a mistake and charges you more than the authorized rate.

A. All right, sir, I will give you an example of that. I think it was in 1934, the Board of Transport Commissioners ordered that certain rates on newsprint paper should be published to the United States. Now, they also qualified

these rates by saying that they should not exceed the 6th class rate. Now, through an oversight, I believe on the part of the publishers of the tariffs, this clause was not put in the tariffs indicating that the maximum would be the 6th class rate.

Q. Was not put in the tariff?

A. Yes, sir; therefore in the case of a shipment say from Ottawa to Buffalo, we would have paid the rate ordered by the Board, which we will say was 30 cents, for example. Well, the 6th class rate was only 25 cents -- these are only figures I am taking out of the air, but the principle is there -- so we would have paid 30 cents, but the intent of the Board of Transport Commissioners was that we would pay only 25 cents, but, as I say, we discovered that.

Q. Did you in fact pay 30 cents or the higher rate?

A. Well, sir, I held up all movement of traffic in this particular case.

Q. You were not out of pocket anything?

A. Oh, no.

Q. I see.

A. But I consulted with Mr. Buckingham at the time, and he remembers that, I believe. It was just an error in the issuing of the tariff, that was all.

MR COVERT: Q. Mr. Hawkins, in the case of a mistake like that, for instance if there is an overcharge by error, do not the railways always make a refund?

A. In that case, an error in rates, if the rate is published---

Q. There is no need of reparation for a case like that?

A. Oh, no; we just put a claim in for it.

THE CHAIRMAN: Q. And you get your refund?

A. Sometimes we have a bit of a debate about that, sir.

Q. When the error is cleared up, if it is on your

side, you get your refund?

A. That is right.

Q. Well, you see, that is a very different thing from the point that you are really talking about; that is, the provision whereby if a rate which has been legal is later on held to be illegal, then there should be a refund of all the moneys paid under the former rate; that is what goes on in the States?

A. Yes, sir.

Q. You think that ought to go on here too?

A. I think it should up to a certain point. I do not say every rate---

Q. When I say illegal, I mean found to be unreasonable or---

A. Well, I feel the user of such a rate should be treated---

Q. Well, we have had other parties who put the same application before us.

MR COVERT: Q. Mr. Hawkins, do you suggest that reparations should be awarded by the Board of Transport Commissioners or through the courts?

A. I think the Board of Transport Commissioners would be the logical body to handle that, because they are dealing with freight rates which possibly were filed with the Board, and some of them might have been approved; I don't know.

Q. And you also, I take it, suggest that this right of reparation should apply not only to international rates but to all rates in Canada and that it should apply -- if they subsequently decide that a rate in effect was not just and reasonable?

A. Yes.

Q. Would not that perhaps leave the railways in an unsettled position with regard to any rate below -- any rate

that has been fixed -- the maximum rate?

A. Well, I do not think so, sir, because if the railways decide to favour -- I am just giving this as a theoretical example -- if the railways decided shall we say to favour our competitors at a mill within a few miles of ours by giving them lower rates than ours, and we proved that these rates were unjust and that they were affecting us detrimentally, I think that we should be entitled to any charges that we paid over and above those which should have been assessed.

Q. The case you are talking about, then, where there is an undue preference given to a competitor -- is that right?

A. Yes, taking everything into consideration.

Q. And what you would say is that if they gave that to the competitor you should have the same rate; is that right?

A. Everything being equal, all conditions being the same.

Q. Yes; and then that your reparations would be the difference in the rate?

A. In the amount that would be established that was unreasonable, over and above the rate we paid -- over and above the rate we should have paid.

Q. That, then, the case that you mention, is a case of discrimination, unjust discrimination, and a case where you have proved actual damage; that is correct?

A. Yes.

Q. Now, I wonder if you could give me an example as to a rate found to be unjust and unreasonable to which reparations should be applied, that is, as distinct from purely discriminatory?

A. Well, I would say that that would rest entirely

with the discretion of the Board of Transport Commissioners, if they had that authority to decide whether the user of the rate or rates had been discriminated against unjustly or unreasonably---

Q. I am sorry; perhaps I have not made myself clear. Let me give you an example. Supposing a rate has been approved by the Board, we will say at \$1.00, and then someone comes in and says later, "That rate is unjust and unreasonable, it is too high," should the Board ever be able to award reparations in a case like that? Suppose they say, "Circumstances and conditions have changed, and that rate should now be 90 cents"?

A. No, I do not think whoever paid the \$1.00 rate would be entitled to reparations in a case of that type, if the Board had originally approved the rate, and then through a change in circumstances, there would be no damage there, in my opinion.

Q. So you really do, then, do you not, confine yourself to the case where there is unjust discrimination?

A. Well, yes, I would think that that would be so.

Q. And in the case of joint through international rates?

A. Yes. In this case I presume the Interstate Commerce Commission found that they had authorized an unreasonable increase in these sulphur rates, and so they amended their order accordingly.

THE CHAIRMAN: Q. In that case they ordered reparations?

A. Yes, sir, they ordered reparations, said that they would grant -- and in fact they granted blanket reparations in some instances where a group of shippers could go and they would say, "Here, we will give all those who apply reparations on X number of tons of sulphur that moved

during this period."

MR COVERT: Q. I would just like to know, Mr. Hawkins, are you clear that in the case to which you refer the I.C.C. had approved of the initial rates which were later held to be too high?

A. I think that as far as I know the rates on sulphur were just filed with the Interstate Commerce Commission, but they in turn then authorized the flat increase on these rates, and then later on they said there shall be only a maximum increase of so many cents.

Q. In other words, that was a case of a flat horizontal increase across the board, perhaps, and then later there were adjustments made confining it in certain cases to a flat maximum?

A. A number of cents per hundred pounds. The maximum was in this instance, I believe, one and one-half cents per hundred pounds.

THE CHAIRMAN: Any questions?

MR EVANS: I have just one.

CROSS-EXAMINED BY MR EVANS:

Q. Mr. Hawkins, as I understand it, what you feel there should be is a retroactive effect given to decreases in rates; is that what you mean by reparations?

A. No, not necessarily, sir. In the case of this one I have just mentioned, where there must have been some error, I do not know the background of it.

Q. You are speaking now of the sulphur one?

A. Yes.

Q. I just wanted to carry you a little beyond that. When you speak of reparations, I was not quite clear whether Mr. Covert left you that you were or were not asking for reparations in any case other than a discrimination case?

A. Well, I think that is about the only case where we

could get reparations -- a case of unjust discrimination; I will qualify that, sir.

Q. Now, may I suggest this to you: Where there is unjust discrimination found to exist, the Board as a rule -- and you may know this -- gives the railway an option to take out the rate complained of or to reduce the other rate?

A. Yes.

Q. Now, if reparations were to be granted, wouldn't that take away the option of the railway?

A. No, sir, I do not think so.

Q. You do not think so?

A. No.

Q. Well, let us take the case of rates where you had a rate of \$1.00, and another rate given to another competitor of yours to a common market we will say was 90 cents, and you complained that that was discriminatory, and the Board came along and decided that it was discriminatory. Now, they would order the railway to remove the discrimination, in which case the railway would have an option of raising the 90-cent rate to \$1.00 or of reducing your rate to 90 cents. Now, if they exercised their option to increase the lower rate, how could you get reparations?

THE CHAIRMAN: For past shipments; are you not asking of the \$1.00 that was paid for the time that the higher rate was in force?

MR EVANS: Perhaps there should be reparation to the railway by the other shipper who paid only 90 cents.

THE CHAIRMAN: That is another question. What is the rule prevalent in the United States?

MR EVANS: Well, in that case I may say the Interstate Commerce Commission requires proof of damage, and in a great many cases the complainants have been unable to prove damages. There are case after case where reparations

are not awarded because of the failure or the inability of the complainant to prove any damage.

THE CHAIRMAN: That is, the complainant must show not only that he paid so much on the high rate which is now set aside, but that he suffered damages by doing that.

MR EVANS: Yes, sir. That is why I wanted to get this a little more clearly from the witness, as to whether it was possible to have reparations awarded in discrimination cases purely by reference to the difference in two rates, if the railway later was given an option to raise the lower rate to the higher basis. To me it is not consistent.

THE CHAIRMAN: What kind of damages? I am just speculating now, as far as I am concerned. What kind of damages can the shipper show in the United States that he has suffered, except that he has paid so much more than he ought to have paid?

MR EVANS: Well, I will say this, sir: I have not read -- and I have read quite a number of cases -- I have not read recently a case in which there was discrimination as a basis and in which the Commission awarded reparations. In nearly every case I have read -- in fact every one that I can recall having read recently -- they have said that the complainant failed to establish that he had been damaged, that he had made no proof of damage, and therefore no reparation was awarded. Now, I am not saying there are not cases where they have awarded reparations, but they are rare, if my reading can be accepted. I do not recall any. There are other cases where discrimination is not involved, and reparations are awarded on the basis of the difference between the rate complained of and the rate which is found to be just and reasonable.

THE CHAIRMAN: That is, where the rates have been

found to be unjust and unreasonable.

MR EVANS: Yes.

THE CHAIRMAN: And then the damages are measured by the difference between what would have been the right rate and what was actually paid. Now, that covers the past; in so far as the railways having an option is concerned, that is only for the future.

MR EVANS: That is perfectly true, sir.

THE CHAIRMAN: But the witness is concerned with the past, with moneys that he has paid out.

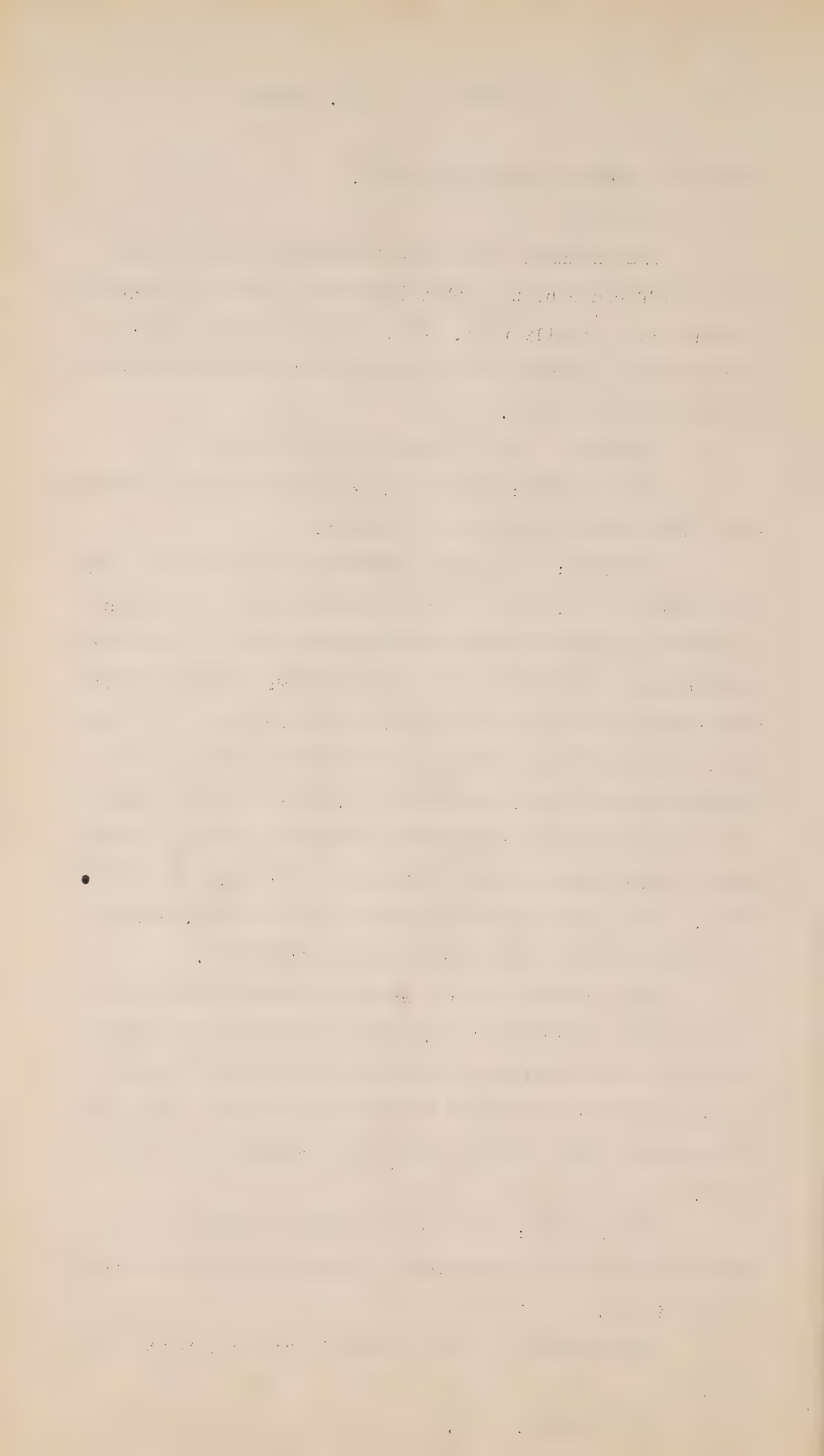
MR EVANS: I am also concerned with the past. May I put this to you, sir: If the Commission or the Board has in effect held that the 90-cent rate was too low, in effect the finding of discrimination is, either Mr. Hawkins should have had the 90-cent rate, or Mr. Jones, who got the 90-cent rate, should not have had it. How are they going to say whether the rate should have been \$1.00 or 90 cents? There is no finding of reasonableness. Therefore I say you might just as well argue that the railways are entitled to go back to Mr. Jones and get the difference, as to say Mr. Hawkins is to come to the railway and get the difference.

THE CHAIRMAN: Well, what the witness wants us to do, and what everybody else who mentioned the matter wants us to do, is to recommend that whatever conditions prevail in the United States should be incorporated here. Now, that would require some research into what actually does take place.

THE WITNESS: Sir, we feel that we should receive approximately the same treatment as our competitors in the United States.

THE CHAIRMAN: Yes, I understand; I say that is your case.

THE WITNESS: Yes.



THE CHAIRMAN: Q. You do not want anything more than that?

A. No, sir, we do not.

THE CHAIRMAN: Are there any other questions?

MR O'DONNELL: We have already indicated our views at different times.

THE CHAIRMAN: Well, thank you very much.

MR COVERT: Mr. Chairman, before adjourning, there are two things.

First, this morning I referred to the filing of part of the Canadian Food Processors' brief, and I have been asked that the whole brief be filed as Exhibit 106, instead of the part.

---EXHIBIT No.106: Brief of Canadian Food Processors Association.

Previously filed on page 7340)

MR COVERT: Then Mr. Hume had a statement that he wished to make, I believe, to correct an answer that he made to your lordship the other day.

MR HUME: Mr. Chairman, last Thursday, in volume 37 of the evidence, when I was asking Mr. Kelly some questions, the subject came up as to the percentage of for-hire commercial vehicles in relation to the total number in Canada, and in giving an illustration of what the other 90% were doing I mentioned a case of the breweries, indicating there that the contract carriers were not included in the 10%. You mentioned that later on as being your understanding, at page 7078. Now, I was subsequently informed that that estimate which was made by the Association did include the contract carriers, and I wanted to correct that.

THE CHAIRMAN: That is, the 43,000-odd includes---

MR HUME: Yes; the way the figure was built up was that the estimate was that there were 435,000 commercial

vehicles in Canada. I notice in the Railway Association brief that they estimate that as 489,000. The difficulty in getting an exact figure is that the Dominion Bureau of Statistics figures include hearses, ambulances, municipal vehicles such as street-cleaning equipment, and so on, so that one can only estimate the number of those vehicles in order to arrive at a figure, and in stating the 10% I understood that that did not include the contract carriers, but I am advised that it does so, and I wanted to correct that so that it would be understood.

I have a partial answer to Mr. Evans' question that I think, with your permission, sir, I would like to give in the morning, because it is now four-thirty -- unless you wish me to go on.

THE CHAIRMAN: Just tell me now again what you say the statement was that is now being corrected. Was that on Friday?

MR HUME: On Thursday, November 3rd, in volume 37.

THE CHAIRMAN: Now, what is the next point, Mr. Hume?

MR HUME: Mr. Sinclair then asked me a question as to the breakdown of the other 90% of the vehicles, and I find that it is impossible to answer the question, because nobody knows what all the other private purchasers in Canada are using their trucks for. They buy a truck, but nobody but themselves knows whether they are carrying farm produce in it, or manufactured goods, or what it is; so that I find that I am unable to answer that question at all. There just has never been any guess even made that I have ever heard of or have been able to discover, as to what the other 90% are being used for, so that I cannot answer Mr. Sinclair's question.

Mr. Evans then asked a question as to what the percentage was of the over-the-road for-hire carriers, what

percentage they bore in relation to the total over-the-road carriers, and I find also there that I am unable to answer his question, because in some of the provinces like Alberta a carrier may be inside a city for five days of the week, and on the sixth day may be out on a 200-mile trip, and it is not possible to find out in Canada what the total percentage of over-the-road carriers they are. I have some figures for Ontario, but so far as Mr. Evans' questions apply to the whole of the country, the information is just not available anywhere.

MR EVANS: I would like it for Ontario, if you would put it on the record sometime; you don't have to do it now.

MR O'DONNELL: What page in volume 37, Mr. Hume?

MR HUME: Page 7050.

THE CHAIRMAN: Is that all, Mr. Hume?

MR HUME: Well, Mr. Evans indicated that he wanted some information for Ontario, so I will put that in the record, but I will wait for to-morrow if you wish it, sir. It is now after the normal closing time.

THE CHAIRMAN: Does the information consist of figures?

MR HUME: Figures, yes.

THE CHAIRMAN: You might give them now.

MR HUME: I find, upon calling the Department by long-distance -- I just had these figures over the telephone -- that in the Province of Ontario in the year 1947 the total number of commercial vehicles in the province of Ontario was 142,297, which includes hearses, ambulances and municipal vehicles, which are not normally considered commercial vehicles from the standpoint of carrying freight.

Then the total licensed carriers in the Province of Ontario were 11,227, or 7.8% of the total.

The A and B class carriers, who are the common carriers, were 4,080, and the C and D class carriers, which are your contract carriers, were 2,756.

That is for 1947. For 1948 the total number was 162,397.

The total P.C.V. carriers was 12,062, or 7.4% of the total.

The A and B class, being the common carrier, was 4,456, and the C and D class, which are your contract carriers, were 2,886.

THE CHAIRMAN: Is that all?

MR COVERT: Mr. Chairman, I understand by agreement there were two briefs that were to be taken as read into the record. One was the brief of the Royal Agricultural Winter Fair. I think it was agreed that there would be no objection to having that taken in.

THE CHAIRMAN: You mean there is nothing to be said about them?

MR COVERT: That is right, Mr. Chairman.

THE CHAIRMAN: What is the first one?

MR COVERT: The Royal Agricultural Winter Fair. Mr. McKee, the General Manager, said that there was nothing that he could add, and the Secretary discussed it with the various counsel and it was agreed that that would be taken as read into the record.

The next one was the submission made by Consolidated Truck Lines Limited. I think the same applies to that. Those will be both read into the record.

THE CHAIRMAN: Nothing to be said about that brief either?

MR COVERT: That is right.

BRIEF PRESENTED BYROYAL AGRICULTURAL WINTER FAIR

TORONTO

AGAINST PROPOSED INCREASE IN FREIGHT
RATES FOR EXHIBITORS.

1. A fair is not a separate entity, but is composed of individuals who are exhibitors, spectators, members of the organization, financial supporters, and persons who assist by serving on various committees. Therefore anything said herein about such individuals applies to the Royal.

2. For almost fifty years the railways have contributed to the support of Canadian agriculture by providing a special freight rate for live stock to fairs. It is not applicable to entries in the Horse Show. This is contained in Canadian Freight Association Tariff No. 22-B. The provisions so far as the Royal is affected may be summarized briefly as follows: Shipments originating between Levis, P.S. and Fort William, Ont. are charged 60% of full tariff; if originating East of Levis or West of Fort William are charged full rate to the Royal but returned free. This concession was cancelled as of 15th May, 1949, but the date of cancellation was extended to 31st December, 1949.

3. It must be kept in mind that in 1948 the basic tariff, on which the above 60% and 50% is calculated, was increased 21% and that a further increase is now being urged by the railways before the Royal Commission on Transportation. Apart from any increase which may or may not be granted on the last-mentioned application, the 21% increase plus the cancellation of the special tariff means an increase for the freight originating between Levis and Fort William of 101%, and for the Eastern and Western exhibitor an increase of 142%. This is an unreasonable increase even in proportion to increased costs and most dis-

couraging to agriculturists.

4. While the railways have the right to alter sub-normal rates, it is submitted that this special exhibition rate has been in effect for such a length of time (approximately fifty years) that it has come to be regarded by agriculturists as a prescribed rate and therefore it should be altered only by the Board of Transport Commissioners and after a hearing by the Royal Commission on Transportation now sitting. Its arbitrary cancellation by the railways gives no opportunity for agriculturists to present their case. A hearing by the Commission would be a just and fair method of proceeding and would impress on agriculturists that the railways were endeavouring to deal fairly with them and were prepared to accept the opinion of an impartial tribunal.

5. The concession granted by the railways for shipments of purebred stock and shipments to Fairs, applies to a very small proportion of the live stock freight moved by the railways. Yet to the individual the increase in charges is substantial. By encouraging these shipments the railways in the end add to their general live stock freight revenue.

6. The Royal is the show window of agricultural Canada and the fact that exhibits come from all over Canada adds to the value of the competition and to the benefits derived from it. The opportunity The Royal gives to see the best on a national scale and on an international, to make comparisons, to exchange experiences and to learn of new scientific developments is an education and an inspiration to agriculturists and of great value to the youth of the country lucky enough to get to the Royal. An auction is held when the finest stock is sold thereby bringing together the producer, the

merchandizer, and the consumer. These observations obviously apply to other fairs even if to a lesser degree due to their being less national in character. All this adds up to development of better agriculture, more production, more demand due to improvement in quality and finally to larger shipments for the railways and bigger freight revenues.

7. There are ever increasing entries at the Royal from U.S.A. These will continue only if the fair continues to offer competition with the best that can be produced in the whole of Canada and not merely local production. Nation-wide entries must be encouraged by every means possible. These U.S.A. entries mean more revenue for the railways.

8. To decrease entries, as would be done by the very excessive increase in freight rates on live stock, would most certainly decrease interest in the Royal and ultimately attendance. The railways are best able to judge whatn decrease in passenger revenue this would mean but obviously such a result must be expected.

9. Prize money is constant i.e. does not vary with the distance the exhibit comes. Therefore, the longer the shipment the greater the expense is in proportion to the prize money and with the freight charges being greatly increased the exhibitors from a great distance will be the ones most likely to drop out and they in turn are the best customers of the railways.

10. The change in rates will mean more people will ship in by truck, thereby depriving the railways of all revenue, and creating for the Royal an additional parking problem. This to the railways may seem a matter of minor importance, but to the Royal it is a major problem.

11. The Royal, along with all the other fairs, has for yeas encouraged and stimulated live stock

production and improvement by providing liberal prize money and competent judging without profit to itself. Exhibitors assist in this worthy effort by bearing expenses which in most cases far exceed any returns they get. The public contribute by paying admission charges. Many citizens do their part by giving financial contributions. Several hundred give of their time free to serve on various committees.

The Dominion and most provincial governments and the County of York and City of Toronto do their part by making substantial financial grants. The railways claim this exhibition traffic is either not profitable at all or not as profitable as other freight traffic. They are in possession of the facts and obviously this statement should be accepted as correct. In the past, the railways have not expected this type of traffic to be fully compensatory. Just as the others already mentioned in this paragraph make their contribution to the Canadian Live Stock Industry, so this service by the railways at a reduced cost has been their contribution to the industry and should continue to be so. The railways reward for such promotional assistance is in the general transportation on a profitable basis of an improved and enlarged live stock industry as well as processed meats, fertilizers, and many other by-products to the industry. The revenue waived on exhibits is small compared to the gain on the industry as a whole and is nothing more than the railways' fair contribution along with the contribution of others. Certainly the railways should not be the ones to commence the breakdown of the co-operation which has existed for so many years nor to lose the good-will of agriculturists and fairs.

G. S. McKee,
General Manager.

SUBMISSION MADE BY CONSOLIDATED TRUCK LINES LTD. TO THE
ROYAL COMMISSION ON TRANSPORTATION

The major Railway Companies and the Associations representing them have chosen in their submissions before this Commission to place at the door of the highway transport industry the major part of the blame for any maladjustments that may exist in transportation in Canada today. It is not the purpose of this short submission to refute or attempt to refute these charges on behalf of the industry, but it was felt that these charges could lead to misconceptions in the minds of this Commission and in the minds of the shipping public at large, which are untrue and which should be corrected.

The impression created by the briefs mentioned above is that the individual transport operator is in a state of economic chaos; he is a creature who is governed by no considerations of service, does not adhere to tariffs available to shippers who wish to use his services, is guilty of discrimination between shippers who ship similar goods from and to the same points, who adheres to no coherent rate structure, and who in general exists merely to provide unfair competition for railways regardless of the interests of shippers or of his own business. It is the purpose of this submission to set out briefly the measures taken by at least one transport concern to provide a service for shippers and to charge rates which are reasonable both to the shipper and to the transport operator.

It is true that in Ontario today there are no regulations which compel the filing and publishing of tariffs with a period of notice to the shipper, or the provision of reasonable rates, or in short the type of rate regulation to which the railroad companies are subject under the

Railway Act. It is fallacy, however, to assume that the absence of governmental regulation of the pattern set up by the Railway Act will lead or has led to a complete lack of regulation of the individual transport operator. There remains the type of regulation imposed by the individual transport operator upon himself, mindful of the obligation owed to persons who pay for his services and mindful of the economic health of his own enterprise. It is not unreasonable to assume that the transport operator, with the experience of the railway companies in Canada, the Railway Act itself, and the jurisprudence of the Board to draw upon, would voluntarily impose upon himself those provisions and duties which could be adapted to the highway transport as a type of common carrier. This has, in fact, been the case with Consolidated Truck Lines Ltd. It is proposed to consider briefly those measures which have been voluntarily adopted by this organization in recognition of their obligation owed as common carriers.

As pointed out above, the Ontario Government has not as yet seen fit to regulate the publication of tariffs, the classification of freight or to enact measures to ensure equality of tolls and the prevention of discrimination among shippers. The following paragraphs will deal with the voluntary measures taken by Consolidated Truck Lines Ltd. to provide for such regulation. No attempt will be made to set out the regulation imposed by law upon the public commercial vehicle operator under the Public Commercial Vehicle Act or the Highway Traffic Act and regulations thereunder.

It is axiomatic that a coherent rate structure cannot exist without a classification of articles to be carried. Consolidated Truck Lines Ltd. recognizes that fact and

and adheres to a classification for truckload and less-than truckload rates, which is based generally upon C.F.C. No. 19, although in any particular case the classification may be higher or more often lower than the classification contained in C.F.C. No. 19, as it was felt that differing conditions between highway and rail transportation justified it. Again it is worthy of note that no provision of provincial law exists which compels the use of^a classification; it is solely a result of the fact that it was realized that the growth in the enterprise required the growth in facilities for conducting it efficiently and for the provision of an adequate service to the shipping public. The experience in traffic matters of the rail and water carriers has again proved invaluable when intelligently adapted to highway transport conditions.

Consolidated adheres to class tariffs showing rates between points served by Consolidated which are permitted by its license under the Public Commercial Vehicle Act.

It is a point worth emphasizing that these tariffs are printed and published by Consolidated and made available to the shipping public purely voluntarily for the purpose of increasing the service provided to its shippers. The provision of a legal rate ie. a rate clearly understood between the parties, has cut down sharply the haphazard quotation of rates with its consequent economically unsound results.

As has been the case with the railroads and other carriers, it has been found necessary to establish commodity rates from certain points to others named in a tariff where the volume of traffic moving to those points has justified it. These commodity tariffs are published in a similar manner to the class tariffs and are available

to any shipper who has the requisite volume to ship and who is shipping to the points specified in the tariff. These commodity tariffs have been built up through applications made to Consolidated, in a similar manner to the applications made for commodity rates to the railroads.

In the above paragraphs a short statement of the measures adopted by Consolidated Truck Lines Ltd. to regulate themselves with respect to freight rates has been attempted. No attempt has been made to present an exhaustive survey of freight rate methods used by Consolidated Truck Lines Ltd. or by any other individual operator. It is submitted that enough has been shown to refute any inference of inefficiency or unfair competitive methods as between shippers in the field of freight rates.

It is submitted that far from the unprincipled and economically chaotic enterprise that it is represented to be, the individual large transport enterprise in Ontario has taken voluntarily measures which result in a regulation of freight tariffs that compare favourable with the type of regulation imposed by the Railway Act.

It is recognized that the methods adopted by Consolidated are of a voluntary nature; that nothing binds the individual transport operator to perform this self regulation other than their desire to operate fairly upon a sound financial basis and a desire to provide for the maximum and best service for that section of the public using its services. It is submitted that these motives are sufficient incentive to the individual operator.

Regulation of public utilities in some degree is now universally recognized as a necessity and the Highway Transportation Industry, as common carriers should, as much as railroads, be regulated by the appropriate governmental authority. For this reason Consolidated Truck Lines Ltd. has always been in favour of the type of regulation which exists in the Railway Act and in some of the other provinces with respect to highway transport. It is apparent that an enterprise which has gone so far toward self regulation in the interest of the public will comply whole heartedly with legislation directed to the same ends.

In conclusion, it has been the earnest desire of Consolidated Truck Lines Ltd. as an individual highway transport enterprise to build up a freight rate structure which would move efficiently the maximum volume of traffic over the highways at the lowest possible level of rates commensurate with a fair return to the operator on his investment in the enterprise.

By a self-imposed regulation the large scale transport operator has attempted to abolish unjust discrimination among shippers by the publication of and adherence to classification and tariffs, both class and commodity. The individual transport operator is fully aware of the duty owed to the public as a common carrier and is willing to assume his share of responsibility for the movement of the province's goods.

Submitted on behalf of
CONSOLIDATED TRUCK LINES LTD.
by

MICHAEL FRAM

Solicitor for
TRAFFIC ADVISORS.

MR COVERT: Mr. Chairman, there was a suggestion also that the afternoon sessions might be from a quarter to three until a quarter to five, on account of the distance we go for lunch.

THE CHAIRMAN: Yes, that is our own suggestion, on account of the great distance there is coming to and fro, and I understand that is satisfactory to all concerned. From now on, then, we will reconvene in the afternoon at a quarter to three and keep on sitting until a quarter to five.

MR EVANS: May we reserve the right to speak to you on Friday in case some of us want to get a train? Perhaps we could leave Friday to be spoken to; the other days I would have no objection to.

THE CHAIRMAN: What time would be a suitable adjournment on Friday? Four-thirty?

MR EVANS: Yes, sir.

MR O'DONNELL: That would be fine.

THE CHAIRMAN: Well, on Friday we will sit from a quarter to three to four-thirty, then.

---The Commission adjourned at 4:37 p.m. to meet again on Tuesday, November 8, 1949, at 10:30 a.m.

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